



11-25-03

PATENTS

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: )  
Lewis Jr., et al. ) Examiner: Lin, I.  
Serial No: 10/616,750 ) Art Unit: 1725  
Filed: July 10, 2003 )  
For: **METHOD AND APPARATUS FOR ASSISTING REMOVAL OF SAND  
MOLDINGS FROM CASTINGS**

**APPEAL BRIEF FILED UNDER 37 CFR 41.37**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In accordance with 37 CFR 41.37, Applicant submits this Appeal Brief. No fees, other than the fees accompanying this appeal brief, are believed to be due. However, should any additional fees be due, the Office is authorized to charge such fees to deposit account number 23-1951.

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Date: 23 NOV 2005

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November 23, 2005

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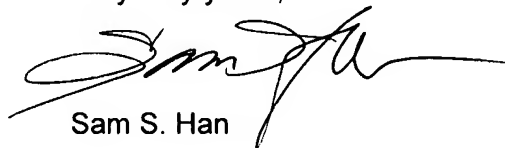
Re: U.S. Patent Application No.: 10/616,750  
Filed: July 10, 2003  
For: **METHOD AND APPARATUS FOR ASSISTING REMOVAL OF SAND  
MOLDINGS FROM CASTINGS**  
Inventor: Lewis, et al.  
Our Reference Number: 2041219-0005

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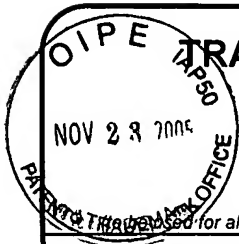
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Sam S. Han

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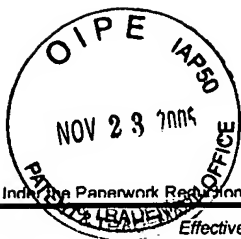
<b>TRANSMITTAL FORM</b>		Application Number	10/616,750
		Filing Date	July 10, 2003
		First Named Inventor	Lewis, et al.
		Art Unit	1725
		Examiner Name	Ing-Hour Lin
Total Number of Pages in This Submission		Attorney Docket Number	2041219-0005

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## For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

### Complete if Known

Application Number	10/616,750
Filing Date	10 July 2005
First Named Inventor	Lewis, et al.
Examiner Name	Ing-Hour Lin
Art Unit	1725
Attorney Docket No.	2041219-0005

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#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

#### 2. EXCESS CLAIM FEES

##### Fee Description

Each claim over 20 (including Reissues)

Small Entity  
Fee (\$)

Fee (\$)

Each independent claim over 3 (including Reissues)

50 25

Multiple dependent claims

200 100

360 180

Total Claims Extra Claims Fee (\$)

Fee Paid (\$)

- 20 or HP = x =

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$)

Fee Paid (\$)

- 3 or HP = x =

HP = highest number of independent claims paid for, if greater than 3.

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$)

Fee Paid (\$)

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#### SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 51,771	Telephone (404)443-5728
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PATENTS

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Lewis Jr., et al. ) Examiner: Lin, I.  
Serial No: 10/616,750 ) Art Unit: 1725  
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**I. REAL PARTY IN INTEREST**

The real party in interest is Consolidated Engineering Co. (CEC), who is the assignee of the entire interest in this patent. The principal place of business for CEC is 1971 McCollum Parkway, NW, Kennesaw, Georgia 30144-3637, United States of America.

## **II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS**

There are currently no appeals related to this patent application.

There are currently no interferences related to this patent application.

There is, however, a judicial proceeding related to this patent application. The judicial proceeding is *Consolidated Engineering Company v. Alotech, Ltd., LLC, John Grassi, John Campbell, and Campbell Technologies v. Womble, Carlyle, Sandridge & Rice, PLLC*, Civil Action No. 04-1-01071, currently pending in the Superior Court of Cobb County, State of Georgia. Publicly available documents relating to the judicial proceeding are attached below as exhibits in Section X. Other documents, which are subject to a protective order, are not included with this appeal brief.

### **III. STATUS OF CLAIMS**

Claims 1 through 48 stand rejected.

The rejection of claims 1 through 48 are appealed.

No amendments were presented in Applicant's latest response. However, Applicant amends claim 25 to correct for an error in antecedent basis. That correction is noted in the clean copy of the claims.

A clean copy of the claims, as required by MPEP 1205.02, is attached hereto at Section VIII.

#### **IV. STATUS OF AMENDMENTS**

There was only one amendment made during the prosecution of this matter. Namely, claim 42 was amended in response to a rejection under 35 U.S.C. § 112, for improper antecedent basis.

That amendment, which corrected the antecedent basis, has been entered.

No other amendments were submitted during the prosecution of this matter.

In connection with this appeal brief, Applicant also amends claim 25 to correct an error in antecedent basis. Specifically, claim 25 originally depended from claim 23. However, as evident from the language of the claim limitations, claim 25 should have properly depended from claim 24. Applicant now makes that correction.

No other amendments, other than those recited above, are submitted in connection with this appeal brief.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is directed to systems and methods for removing molds and cores from castings. Application at 3. Unlike prior-art approaches, in which direct solid impact (*e.g.*, hammer) was used to break molds and remove the molds from castings, the claimed subject matter utilizes energized streams (*i.e.*, non-solid-impact mechanisms) to dislodge molds from castings. In some embodiments, pulsations of energy are used to dislodge molds from castings. In yet other embodiments, fluid media, such as, for example, pressurized fluids, are used to dislodge molds from castings. For some embodiments, the mold is moved along a processing path, where it encounters the non-solid-impact dislodging mechanism. In other embodiments, the energized stream is directed to the mold when the casting is partially solidified. For yet other embodiments, the mold is scored prior to dislodging.

In the various disclosed embodiments, these non-solid-impact devices can include thermal expansion (Application at page 14, line 23 through page 15, line 2 (hereafter abbreviated as "14:23-15:2")), explosive charges 22 (15:10-15:24), high-energy and low-energy pulse waves 32 (16:1-16:8), pressurized fluids (3:16), particles (3:17), lasers (3:17), electromagnetic energy (3:17), shockwaves (3:24), radiant energy (3:22), inductive energy (3:22), force applicators 52 (19:3), air cannons (19:3), fluid nozzles (19:3), acoustic wave generators (19:3), pulse wave generators (19:2), and various combinations thereof (*see, e.g.*, claim 6).

In short, the claimed subject matter utilizes non-solid-impact mechanisms for dislodging and/or removing molds from castings, while the prior art utilized solid-impact mechanisms for removing molds from castings.



**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether the Examiner's rejections are arbitrary and capricious insofar as the examiner has failed to comply with MPEP 706.02(j) in rejecting all pending claims.
2. Whether claims 1-7, 10-12, 14-15, 17-19, 21-27, 29-31, and 33-39 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Bergna, Swanson, Schimmel, or Heine.
3. Whether claims 8, 13, 20, 32, 40, and 42 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Bergna, Swanson, Schimmel, or Heine, and further in view of Musschoot.
4. Whether claims 9, 16, 28, 41, and 43-47 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Schneider, Swanson, Schimmel, or Heine, and further in view of Easwaran.
5. Whether claim 48 is unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Schneider, Swanson, Schimmel, or Heine, and further in view of Easwaran and Muschoot.

## VII. ARGUMENTS

### *A. Procedural History Culminating in the Appeal Brief*

The application, which is the subject of this appeal brief, was filed on July 10, 2003.

A non-final office action was mailed by the United States Patent and Trademark Office (USPTO) on March 25, 2005, in which all claims stood rejected.

Applicants responded to the non-final office action on May 5, 2005. In that response, Applicants specifically noted the deficiencies in the office action. In view of the deficiencies in the rejections, Applicants requested allowance of all claims.

On July 28, 2005, the Examiner mailed a final office action, which simply regurgitated the deficient rejections from the first, non-final office action.

Insofar as the Examiner's rejections were once again deficient, Applicants requested a telephonic interview with the Examiner on August 18, 2005, to ascertain whether an agreement could be reached, thereby advancing the prosecution of this case. In response to Applicants' request, the Examiner refused a telephonic interview, expressing that there would be nothing to discuss.

In view of the Examiner's refusal to remedy the deficient rejections, Applicants filed a response after final rejection, expressly noting the deficiencies in the original non-final office action. Applicants also concurrently filed a notice of appeal. That notice of appeal was filed on September 27, 2005.

*B. Arguments Addressing the Rejection of Claims 1 Through 48 Under 35 U.S.C. § 103(a)*

1. Whether the Examiner's rejections are arbitrary and capricious insofar as the examiner has failed to comply with MPEP 706.02(j) in rejecting all pending claims.

The Examiner rejects claims 1 through 48 "under 35 U.S.C. § 103(a) as being obvious over Taccone in view of either Bergna, Swanson et al., Schimmel et al. or Heine et al."

The MPEP, in section 702.02(j), expressly recites that "[i]t is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." In fact, the Code of Federal Regulations (CFR) requires that "the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 CFR 1.104(c)(2), emphasis added.

Here, the Examiner has failed to properly communicate the basis for his rejection, thereby denying Applicant a fair opportunity to reply. Additionally, the Examiner has repeatedly failed to clearly explain the pertinence of each reference as applied against each claim.

Specifically, the Examiner rejects claims 1-7, 10-12, 14-15, 17-19, 21-27, 29-31, and 33-39 with a single cursory paragraph.<sup>1</sup> In other words, the Examiner rejects a total

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<sup>1</sup> That paragraph recites: "However, for the purpose of fracture enhancement, the fracture force is used and taught: the use of general effect of mismatch of thermal expansion by Bergna (col. 7, lines 61+) on binder and mold removal from he casting, the use of

of 32 claims in one fell swoop without properly addressing each and every element of the claims. Not only does the Examiner fail to identify which reference applies to which element, the Examiner wholly fails to identify which claim is being rejected by which reference. In fact, the Examiner's rejection simply groups these 32 claims and indicates that they are rejected over Taccone (primary reference) "in view of either Bergna, Swanson et al., Schimmel et al., or Heine et al."

Likewise, for claims 8, 13, 20, 32, 40, and 42, the Examiner rejects all of the claims as a group with a single paragraph. Again, the Examiner fails to identify which references are being applied to which claims. Rather, the Examiner applies the group of references to a group of claims without addressing each and every element of the claims. Even more disturbingly, the Examiner relies on tertiary references without providing any motivation for combining either the secondary references or the tertiary references. In other words, not only does the Examiner fail to identify the motivation for the secondary references, the Examiner further fails to identify the motivation for the tertiary references.

Lastly, for claims 9, 16, 28, 41, and 43-48, the Examiner again repeats his erroneous methodology by rejecting the group of claims with a group of references without providing any guidance on which limitation is being rejected by which reference.

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pressurized fluids by Swanson et al (col. 4, lines 4+), the use of explosives by Schimmel et al (col. 2, lines 59+) and the use of shock wave by Heine et al (col. 2, lines 1+). It would have been obvious to one having ordinary skill in the art to provide Taccone the use of fracture force generated by either effect of thermal expansion or energized streams such as pressurized fluids, explosives and shock wave as taught either Bergna, Swanson

Additionally, the Examiner's cursory rejection fails to specifically address at least the following limitations, which are expressly recited in the claims:

- "radiant energy, inductive energy and combinations thereof," as recited in claims 6, 18, 30, and 38.
- "electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof," as recited in claims 7, 19, 31, and 39.
- "score lines are operatively placed in combination with the explosive charge in predetermined locations," as recited in claim 15.
- "directing a pressurized fluid at exterior walls of the mold," as recited in claim 21.
- "stimulating the mold with an energy pulsation," as recited in claim 23.
- "wherein the energy pulsation is applied as a shock wave," as recited in claim 24.
- "the score lines are operatively placed in predetermined locations for breaking down and dislodging portions of the mold from the casting," as recited in claim 27.
- "applying energy to the coating," as recited in claim 30.
- "heated under elevated pressures in an enriched oxygen atmosphere," as recited in claim 8.

While the Examiner has failed to address other elements, which are not expressly noted above, Applicant submits that this recitation sufficiently demonstrates the deficiencies in the Examiner's rejection, and the Examiner's failure to properly abide by the requirements of the CFR and the MPEP.

In sum, the Examiner's rejection is procedurally improper because, at a minimum:

(1) the Examiner wholly fails to identify which claims are being rejected by which reference, *see*, MPEP 706.02(j), 37 CFR 1.104(c)(2); (2) the Examiner wholly fails to address various elements that are explicitly recited in the claims; and (3) the Examiner

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et al, Schimmel et al, or Heine et al in order to reduce cycling time of removing casting from the sand mold."

fails to point to any teaching, suggestion, or motivation, either explicitly or implicitly, within the references themselves for the obviousness rejection, *see*, MPEP 760.02(j).

These and other deficiencies of the Office Action are described in greater detail below.

2. Whether claims 1-7, 10-12, 14-15, 17-19, 21-27, 29-31, and 33-39 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Bergna, Swanson, Schimmel, or Heine.

MPEP 1205.02 expressly recites that "the claims may be argued separately or as a group." Applicant opts to argue each and every claim separately and independently, since the claims do not stand or fall as a group. Rather, Applicant submits that each and every claim is separately and independently patentable, insofar as each and every claim includes patentable subject matter, as described in greater detail below.

**i. Claim 1**

Claim 1 recites:

1. A method of removing a mold from a casting formed therein, comprising: directing an energized stream at the mold to cause the mold to degrade; and dislodging at least a portion of the degraded mold from the casting.

Applicant respectfully submits that the subject matter of claim 1 is allowable over the cited references. As an initial matter, the Examiner's rejection fails to identify which references are being applied to claim 1. As such, the rejection is facially deficient. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Secondly, the Examiner admits that "Taccone fails to teach the use of . . . energized streams[,]" but contends that it would have been obvious to combine Taccone with either Bergna ("general effect of mismatch of thermal expansion"), Swanson ("pressurized fluids"), Schimmel ("explosives"), or Heine ("shock wave"). There is no mention of "energized streams" in the Examiner's recitation of Bergna, Heine, Swanson, or Schimmel. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Third, Taccone provides no motivation for any other mold-breaking approach, other than by solid contact. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, Taccone, Swanson, and Schimmel are drawn from non-analogous art, thereby making the combination improper. *See*, MPEP 2141(a); MPEP 2145. Specifically, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

As for Schimmel, unlike Taccone, it is classified under ammunitions and explosives (U.S. Class 102) and more specifically under terrain clearance (U.S. Sub-Class 302). Insofar as Taccone and Schimmel are from non-analogous fields, their combination is, again, improper. MPEP 2141(a).

For at least these reasons, claim 1 is allowable over the cited references.

**ii. Claim 2**

Claim 2 recites:

2. The method of claim 1, further comprising scoring the mold by forming score lines in exterior walls of the mold.

First, claim 2 depends from allowable claim 1. As such, for that reason alone, claim 2 includes each and every limitation of claim 1, and therefore should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c).

Thus, for at least these reasons, claim 2 is allowable.

**iii. Claim 3**

Claim 3 recites:

3. The method of claim 2, wherein the score lines are placed in predetermined locations for breaking



down and dislodging portions of the mold from the casting.

First, claim 3 depends from allowable claim 2. As such, for that reason alone, claim 3 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of placing the score lines "in predetermined locations for breaking down and dislodging portions of the mold from the casting." As such, claim 3 has never been properly rejected.

Third, Taccone's "notch 115" is not "for breaking down and dislodging portions of the mold from the casting." Specifically, Taccone's "notch 115" is "molded in the surface of the molds for purposes of controlling and registering the mold with the mold breaker." As such, Taccone's "notch 115" does not read on the "score lines" of claim 3.

Fourth, Taccone provides no motivation to extend Taccone's "notch 115" for purposes of "breaking down and dislodging portions of the mold from the casting" as recited in claim 3. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 3 is allowable.

#### **iv. Claim 4**

Claim 4 recites:

4. The method of claim 1, further comprising thermally expanding the casting to cause the casting to bear against the mold.

First, claim 4 depends from allowable claim 1. As such, for that reason alone, claim 4 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 4 has never been properly rejected.

Third, Taccone provides no motivation to combine Taccone with any of the other cited references, and Taccone further provides no motivation to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 4 is allowable.

**v. Claim 5**

Claim 5 recites:

5. The method of claim 4, wherein the casting is expanded by heating the casting.

First, claim 5 depends from allowable claim 4. As such, for that reason alone, claim 5 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 5 has never been properly rejected.

Third, Taccone provides no motivation to combine Taccone with Bergna, and no motivation in to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 5 is allowable.

**vi. Claim 6**

Claim 6 recites:

6. The method of claim 5, wherein the casting is heated by an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

First, claim 6 depends from allowable claim 5. As such, for that reason alone, claim 6 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 6. Namely, claim 6 recites "an energy source selected from the group consisting of radiant energy, inductive

energy and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 6. As such, claim 6 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 6 is allowable.

**vii. Claim 7**

Claim 7 recites:

7. The method of claim 6, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

First, claim 7 depends from allowable claim 6. As such, for that reason alone, claim 7 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 7. Namely, claim 7 recites that "the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 7. As such, claim 7 has never been properly rejected.

Third, none of the cited references teach "electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof," which is expressly recited in claim 7. As such, the combined teachings in the references do not teach the limitation of claim 7.

Fourth, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 7 is allowable.

**viii. Claim 10**

Claim 10 recites:

10. The method of claim 1, wherein the energized stream comprises a pressurized fluid.

First, claim 10 depends from allowable claim 1. As such, for that reason alone, claim 10 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 10 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as pressurized fluids. Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Thus, for at least these reasons, claim 10 is allowable.

**ix. Claim 11**

Claim 11 recites:

11. The method of claim 10, wherein the pressurized fluid comprises heated air, thermal oils or water.

First, claim 11 depends from allowable claim 10. As such, for that reason alone, claim 11 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "heated air, thermal oils or water," which are expressly recited in claim 11. As such, claim 11 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as "heated air, thermal oils or water." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, presuming that the Examiner intended to use Swanson to reject claim 11, Swanson makes no mention of heated air or oil. Insofar as Taccone makes no mention of heated air or oil, and Swanson makes no mention of heated air or oil, it is axiomatic that the combination of Swanson and Taccone makes no mention of heated air or oil. As such, the combination of Taccone and Swanson is insufficient to render the heated air or oil limitations of claim 11 either anticipated or obvious.

Thus, for at least these reasons, claim 11 is allowable.

**x. Claim 12**

Claim 12 recites:

12. A method of dislodging a mold from a casting formed therein, comprising: directing an energized stream at the mold, wherein the energized stream comprises an explosive charge detonated at a selected location within exterior walls of the mold; and dislodging at least a portion of the mold from the casting.

Applicant respectfully submits that the subject matter of claim 12 is allowable over the cited references. As an initial matter, the Examiner's rejection fails to identify which references are being applied to claim 12. As such, the rejection is facially deficient. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Second, Taccone provides no motivation for any other mold-breaking approach, other than by solid contact. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Third, Taccone and Schimmel are drawn from non-analogous art, thereby making the combination improper. *See*, MPEP 2141(a); MPEP 2145. Specifically, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Schimmel is classified under ammunitions and explosives (U.S. Class 102) and more specifically under terrain clearance (U.S. Sub-Class 302). Insofar as Taccone and Schimmel are from non-analogous fields, their combination is, again, improper. MPEP 2141(a). Moreover, a close review of the functional and structural differences between Taccone and Schimmel



further evidence the non-analogy of Taccone and Schimmel. Schimmel discusses explosives in military applications, while Taccone discusses mold castings.

For at least these reasons, claim 12 is allowable over the cited references.<sup>2</sup>

**xi. Claim 14**

Claim 14 recites:

14. The method of claim 12, and further including scoring the mold by forming score lines in exterior walls of the mold.

First, claim 14 depends from allowable claim 12. As such, for that reason alone, claim 14 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 14 has never been properly rejected.

Thus, for at least these reasons, claim 14 is allowable.

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<sup>2</sup> It is worthwhile to note that claim 12, recited above is similar (but not identical) to claim 12 from issued U.S. Patent Number 6,622,775 ("the '775 patent"). Claim 12 of the '775 patent recites:

12. A method of dislodging a mold from a casting formed therein, comprising:  
placing at least one explosive charge at a selected location within exterior walls of the mold;  
detonating the explosive charge such that the mold fractures and breaks into pieces; and

**xii. Claim 15**

Claim 15 recites:

15. The method of claim 14, wherein the score lines are operatively placed in combination with the explosive charge in predetermined locations for breaking down and dislodging portions of the mold from the casting.

First, claim 15 depends from allowable claim 14. As such, for that reason alone, claim 15 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions the limitation that "the score lines are operatively placed in combination with the explosive charge in predetermined locations for breaking down and dislodging portions of the mold from the casting," which is expressly recited in claim 15. As such, claim 15 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to "score lines that are operatively placed in combination with the explosive charge in predetermined locations for breaking down and dislodging portions of the mold from the casting." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

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dislodging the pieces of the mold from the casting.

Fourth, presuming that the Examiner intended to use Bergna et al. to reject claim 15, Bergna makes no mention of score lines. Insofar as Taccone makes no mention of explosives, and Bergna makes no mention of score lines, it is axiomatic that these two references provide no teachings or motivations to combine with the other. As such, the combination of Taccone and Swanson is insufficient to render claim 15 either anticipated or obvious.

Thus, for at least these reasons, claim 15 is allowable.

**xiii. Claim 17**

Claim 17 recites:

17. The method of claim 12, wherein dislodging the pieces of the mold comprises heating the casting to cause expansion of the casting.

First, claim 17 depends from allowable claim 12. As such, for that reason alone, claim 17 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 17 has never been properly rejected.

Third, Taccone provides no motivation to combine Taccone with any of the other cited references, and Taccone further provides no motivation to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 17 is allowable.

**xiv. Claim 18**

Claim 18 recites:

18. The method of claim 17, wherein heating the casting comprises applying energy to the casting from an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

First, claim 18 depends from allowable claim 17. As such, for that reason alone, claim 18 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 18. Namely, claim 18 recites "an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 18. As such, claim 18 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 18 is allowable.

**xv. Claim 19**

Claim 19 recites:

19. The method of claim 18, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

First, claim 19 depends from allowable claim 18. As such, for that reason alone, claim 19 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 19. Namely, claim 19 recites that "the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 19. As such, claim 19 has never been properly rejected.

Third, none of the cited references teach "electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof," which is expressly recited in claim 19. As such, the combined teachings in the references do not teach the limitation of claim 19.

Fourth, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 19 is allowable.

**xvi. Claim 21**

Claim 21 recites:

21. The method of claim 12, and wherein directing an energized stream at the mold further includes directing a pressurized fluid at exterior walls of the mold.

First, claim 21 depends from allowable claim 12. As such, for that reason alone, claim 21 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 21 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as pressurized fluids. Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and

function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, even ignoring the fact that Swanson and Taccone are from non-analogous fields, Swanson teaches pressurized fluids being injected in boreholes. To the contrary, claim 21 teaches pressurized fluids being directed to the exterior walls. Indeed, insofar as Swanson is directed to boreholes, Swanson cannot teach fluids being directed to the exterior walls, since boreholes typically do not have exterior walls. As such, the use of Swanson to reject claim 21 is improper.

Thus, for at least these reasons, claim 21 is allowable.

**xvii. Claim 22**

Claim 22 recites:

22. The method of claim 21, wherein the pressurized fluid comprises heated air, thermal oils or water.

First, claim 22 depends from allowable claim 21. As such, for that reason alone, claim 22 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "heated air, thermal oils or water," which are expressly recited in claim 22. As such, claim 22 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as "heated air, thermal oils or water." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, presuming that the Examiner intended to use Swanson to reject claim 22, Swanson makes no mention of heated air or oil. Insofar as Taccone makes no mention of heated air or oil, and Swanson makes no mention of heated air or oil, it is axiomatic that the combination of Swanson and Taccone makes no mention of heated air or oil. As such, the combination of Taccone and Swanson is insufficient to render the heated air or oil limitations either anticipated or obvious.

Thus, for at least these reasons, claim 22 is allowable.



**xviii. Claim 23**

Claim 23 recites:

23. A method of dislodging a mold from a casting formed therein, comprising: stimulating the mold with an energy pulsation; fracturing the mold; and dislodging the mold from the casting.

Applicant respectfully submits that the subject matter of claim 23 is allowable over the cited references. As an initial matter, the Examiner's rejection fails to identify which references are being applied to claim 23. As such, the rejection is facially deficient. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Secondly, the Examiner admits that "Taccone fails to teach the use of . . . energized streams[,] " but contends that it would have been obvious to combine Taccone with either Bergna ("general effect of mismatch of thermal expansion"), Swanson ("pressurized fluids"), Schimmel ("explosives"), or Heine ("shock wave"). There is no mention of "energized pulsations" in the Examiner's rejection. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Third, Taccone provides no motivation for any other mold-breaking approach, other than by solid contact. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, Taccone, Swanson, and Schimmel are drawn from non-analogous art, thereby making the combination improper. *See*, MPEP 2141(a); MPEP 2145.

Specifically, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

As for Schimmel, unlike Taccone, it is classified under ammunitions and explosives (U.S. Class 102) and more specifically under terrain clearance (U.S. Sub-Class 302). Insofar as Taccone and Schimmel are from non-analogous fields, their combination is, again, improper. MPEP 2141(a).

Fifth, the Examiner incorrectly presumes that "energy stream" of claim 1 to be synonymous with "energy pulsation" of claim 23. Had Applicant intended to use "energy stream" in claim 23, then Applicant would have recited "energy stream" in claim 23. As evidenced by the use of different words, and further evidenced by different claims depending from claim 1 and claim 23, respectively, the "energy stream" of claim 1 is not coterminous with "energy pulsation" of claim 23. The Examiner erred in presuming that these two phrases were coextensive. As such, claim 23, in its entirety, has never been properly rejected.

Lastly, none of the cited references teach an "energy pulsation." Thus, it is axiomatic that no combination of the cited references teaches "energy pulsation." In other words, if "energy pulsation" is absent from all of the individual references, then "energy pulsation" cannot be present in the combination of all of the references.

For at least these reasons, claim 23 is allowable over the cited references.

**xix. Claim 24**

Claim 24 recites:

24. The method of claim 23, wherein the energy pulsation is applied as a shock wave.

First, claim 24 depends from allowable claim 23. As such, for that reason alone, claim 24 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "shock wave," which is expressly recited in claim 24. As such, claim 24 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as a "shock wave." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, none of the cited references teach "shock wave." As such, the combination of the references cannot teach "shock wave." Insofar as "shock wave" is wholly absent from the individual or combined teachings of all of the cited references, Applicant submits that the cited references cannot properly reject, either as being anticipated or as being obvious, claim 24

Thus, for at least these reasons, claim 24 is allowable.

**xx. Claim 25**

Claim 25 recites:

25. The method of claim 24, wherein the shock wave is produced from at least one of the following: mechanical means, cannons, pressurized gasses and electromechanical means, and a combination thereof.

First, claim 25 depends from allowable claim 24.<sup>3</sup> As such, for that reason alone, claim 25 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "mechanical means, cannons, pressurized gasses and electromechanical means, and a combination thereof," which is expressly recited in claim 25. As such, claim 25 has never been properly rejected.

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<sup>3</sup> Applicant notes that claim 25 has been corrected in connection with this appeal brief to properly depend from claim 24, and not from claim 23 as originally submitted.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as "mechanical means, cannons, pressurized gasses and electromechanical means, and a combination thereof." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, none of the cited references teach the above-recited elements. As such, the combination of the references cannot teach claim 25. Insofar as the recited elements are wholly absent from the individual or combined teachings of all of the cited references, Applicant submits that the cited references cannot properly reject, either as being anticipated or as being obvious, claim 25

Thus, for at least these reasons, claim 25 is allowable.

**xxi. Claim 26**

Claim 26 recites:

26. The method of claim 23, and further comprising scoring the mold by forming score lines in exterior walls of the mold.

First, claim 26 depends from allowable claim 23. As such, for that reason alone, claim 26 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 26 has never been properly rejected.

Thus, for at least these reasons, claim 26 is allowable.

**xxii. Claim 27**

Claim 27 recites:

27. The method of claim 26, wherein the score lines are operatively placed in predetermined locations for breaking down and dislodging portions of the mold from the casting.

First, claim 27 depends from allowable claim 26. As such, for that reason alone, claim 27 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions the limitation that "the score lines are operatively placed in combination with the explosive charge in predetermined locations for breaking down and dislodging portions of the mold from the casting," which is expressly recited in claim 27. As such, claim 27 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to "score lines that are operatively placed in combination with the explosive charge in predetermined locations for breaking down and dislodging portions of the mold from the casting." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, presuming that the Examiner intended to use Bergna et al. to reject claim 27, Bergna makes no mention of score lines. Insofar as Taccone makes no mention of explosives, and Bergna makes no mention of score lines, it is axiomatic that these two references provide no teachings or motivations to combine with the other. As such, the combination of Taccone and Swanson is insufficient to render claim 27 either anticipated or obvious.

Thus, for at least these reasons, claim 27 is allowable.

**xxiii. Claim 29**

Claim 29 recites:

29. The method of claim 23, wherein dislodging the mold from the casting includes heating the casting so as to cause the casting to expand.

First, claim 29 depends from allowable claim 23. As such, for that reason alone, claim 29 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 29 has never been properly rejected.

Third, Taccone provides no motivation to combine Taccone with any of the other cited references, and Taccone further provides no motivation to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 29 is allowable.

**xxiv. Claim 30**

Claim 30 recites:

30. The method of claim 29, wherein heating the casting comprises applying energy to the coating from an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

First, claim 30 depends from allowable claim 29. As such, for that reason alone, claim 30 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 30. Namely, claim 30 recites "an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 30. As such, claim 30 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 30 is allowable.



**xxv. Claim 31**

Claim 31 recites:

31. The method of claim 30, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

First, claim 31 depends from allowable claim 30. As such, for that reason alone, claim 31 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 31. Namely, claim 31 recites that "the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 31. As such, claim 31 has never been properly rejected.

Third, none of the cited references teach "electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof," which is expressly recited in claim 31. As such, the combined teachings in the references do not teach the limitation of claim 31.

Fourth, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 31 is allowable.

**xxvi. Claim 33**

Claim 33 recites:

33. The method of claim 23, wherein stimulating the casting with a high energy pulsation includes directing a pressurized fluid at exterior walls of the mold with a force sufficient to cause the mold to fracture.

First, claim 33 depends from allowable claim 23. As such, for that reason alone, claim 33 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 33 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as pressurized fluids. Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and

function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, even ignoring the fact that Swanson and Taccone are from non-analogous fields, Swanson teaches pressurized fluids being injected in boreholes. To the contrary, claim 33 teaches pressurized fluids being directed to the exterior walls. Indeed, insofar as Swanson is directed to boreholes, Swanson cannot teach fluids being directed to the exterior walls, since boreholes typically do not have exterior walls. As such, the use of Swanson to reject claim 33 is improper.

Thus, for at least these reasons, claim 33 is allowable.

#### **xxvii. Claim 34**

Claim 34 recites:

34. The method of claim 33, wherein the pressurized fluid comprises heated air, thermal oils or water.

First, claim 34 depends from allowable claim 33. As such, for that reason alone, claim 34 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "heated air, thermal oils or water," which are expressly recited in claim 34. As such, claim 34 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as "heated air, thermal oils or water." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, presuming that the Examiner intended to use Swanson to reject claim 34, Swanson makes no mention of heated air or oil. Insofar as Taccone makes no mention of heated air or oil, and Swanson makes no mention of heated air or oil, it is axiomatic that the combination of Swanson and Taccone makes no mention of heated air or oil. As such, the combination of Taccone and Swanson is insufficient to render the heated air or oil limitations of claim 34 either anticipated or obvious.

Thus, for at least these reasons, claim 34 is allowable.

**xxviii. Claim 35**

Claim 35 recites:

35. A method of dislodging a mold from a casting formed therein, comprising: moving the mold along a processing path with the casting therein; directing a fluid media at exterior walls of the mold; and dislodging the mold from the casting with the fluid.

Applicant respectfully submits that the subject matter of claim 35 is allowable over the cited references. As an initial matter, the Examiner's rejection fails to identify which references are being applied to claim 35. As such, the rejection is facially deficient. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Secondly, the Examiner admits that Taccone fails to teach the use of . . . pressurized fluids[,]" but contends that it would have been obvious to combine Taccone with either Bergna ("general effect of mismatch of thermal expansion"), Swanson ("pressurized fluids"), Schimmel ("explosives"), or Heine ("shock wave"). Taccone, however, provides no motivation for any other mold-breaking approach, other than by solid contact. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Third, Taccone, Swanson, and Schimmel are drawn from non-analogous art, thereby making the combination improper. *See*, MPEP 2141(a); MPEP 2145. Specifically, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to

mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fourth, in addition to being from non-analogous art, Swanson further teaches that high-pressure fluids are injected in boreholes. Swanson, col. 2, line 48. To the contrary, claim 35 recites that the fluid is directed to "exterior walls of the mold." As such, Swanson does not teach the directing of fluids to exterior walls of the mold. Indeed, Swanson cannot teach the directing of fluids to the exterior portion of anything, since boreholes typically do not have exterior walls. As such, Swanson cannot be used in forming an obviousness rejection of claim 35.

For at least these reasons, claim 35 is allowable over the cited references.

**xxix. Claim 36**

Claim 36 recites:

36. The method of claim 35, wherein the fluid comprises heated air, thermal oils or water.

First, claim 36 depends from allowable claim 35. As such, for that reason alone, claim 36 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). In fact, the rejection never mentions "heated air, thermal oils or water," which are expressly recited in claim 36. As such, claim 36 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach, such as "heated air, thermal oils or water." Taccone further fails to provide any motivation to combine with any of the other references. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Fourth, as noted above, Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

Fifth, presuming that the Examiner intended to use Swanson to reject claim 36, Swanson makes no mention of heated air or oil. Insofar as Taccone makes no mention of heated air or oil, and Swanson makes no mention of heated air or oil, it is axiomatic that the combination of Swanson and Taccone makes no mention of heated air or oil. As

such, the combination of Taccone and Swanson is insufficient to render the heated air or oil limitations of claim 36 either anticipated or obvious.

Thus, for at least these reasons, claim 36 is allowable.

**xxx. Claim 37**

Claim 37 recites:

37. The method of claim 35, wherein dislodging the pieces of the mold comprises heating the casting to cause expansion of the casting within the mold.

First, claim 37 depends from allowable claim 35. As such, for that reason alone, claim 37 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). As such, claim 37 has never been properly rejected.

Third, Taccone provides no motivation to combine Taccone with Bergna, and no motivation in to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 37 is allowable.

**xxxi. Claim 38**

Claim 38 recites:



38. The method of claim 37, wherein heating the casting comprises directing energy through the mold at the casting with an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

First, claim 38 depends from allowable claim 37. As such, for that reason alone, claim 38 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 38. Namely, claim 38 recites "an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 38. As such, claim 38 has never been properly rejected.

Third, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 38 is allowable.

#### **xxxii. Claim 39**

Claim 39 recites:

39. The method of claim 38, wherein the energy source is selected from the group consisting of

electromagnetic energy, lasers, radio waves,  
microwaves, and combinations thereof.

First, claim 39 depends from allowable claim 38. As such, for that reason alone, claim 39 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, as noted above, the Examiner's rejection is procedurally deficient, since the Examiner fails to identify which reference applies to which claim. 37 CFR 1.104(c). Moreover, the rejection never even mentions the limitation of claim 39. Namely, claim 39 recites that "the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof." The Examiner's rejection wholly fails to address this express limitation of claim 39. As such, claim 39 has never been properly rejected.

Third, none of the cited references teach "electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof," which is expressly recited in claim 39. As such, the combined teachings in the references do not teach the limitation of claim 39.

Fourth, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 39 is allowable.

3. Whether claims 8, 13, 20, 32, 40, and 42 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Bergna, Swanson, Schimmel, or Heine, and further in view of Musschoot.

i. **Claim 8**

Claim 8 recites:

8. The method of claim 1, and wherein the mold is formed from sand and a degradable binder that is combusted as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

Applicant respectfully submits that the subject matter of claim 8 is allowable over the cited references.

As an initial matter, claim 8 depends from allowable claim 1. As such, for that reason alone, claim 8 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 8. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 8. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Third, the Examiner wholly fails to address a limitation that is expressly recited in claim 8. Namely, claim 8 expressly notes that the mold is heated "under elevated pressures." However, nowhere in the Examiner's rejection is "elevated pressures" even mentioned. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Fourth, Taccone, the primary reference, makes no mention of heating a mold "under elevated pressures." Additionally, none of the secondary references provide any motivation for mold heating under "elevated pressures." Lastly, Muschoot, the tertiary reference, fails to teach the heating of molds "under elevated pressures." Insofar as "elevated pressures" is wholly absent from the primary, secondary, and tertiary references, it is axiomatic that the combination of all of these references will likewise be deficient of any teachings on heating of molds "under elevated pressures."

For at least these reasons, claim 8 is allowable over the cited references.

**ii. Claim 13**

Claim 13 recites:

13. The method of claim 12, wherein the mold is comprised of sand and a binder.

First, claim 13 depends from allowable claim 12. As such, for that reason alone, claim 13 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 13. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 13. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

For at least these reasons, claim 13 is allowable over the cited references.

**iii. Claim 20**

Claim 20 recites:

20. The method of claim 12, and wherein the mold is formed from sand and a degradable binder that is combusted as and the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown and dislodging of the mold from the casting.

First, claim 20 depends from allowable claim 12. As such, for that reason alone, claim 20 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 20. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 20. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Third, the Examiner wholly fails to address a limitation that is expressly recited in claim 20. Namely, claim 20 expressly notes that the mold is heated "under elevated pressures." However, nowhere in the Examiner's rejection is "elevated pressures" even mentioned. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Fourth, Taccone, the primary reference, makes no mention of heating a mold "under elevated pressures." Additionally, none of the secondary references provide any

motivation for mold heating under "elevated pressures." Lastly, Muschoot, the tertiary reference, fails to teach the heating of molds "under elevated pressures." Insofar as "elevated pressures" is wholly absent from the primary, secondary, and tertiary references, it is axiomatic that the combination of all of these references will likewise be deficient of any teachings mold-heating "under elevated pressures."

For at least these reasons, claim 20 is allowable over the cited references.

**iv. Claim 32**

Claim 32 recites:

32. The method of claim 23, and wherein the mold is formed from sand and a degradable binder and dislodging the mold from the casting comprises combusting the binder as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

First, claim 32 depends from allowable claim 23. As such, for that reason alone, claim 32 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 32. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 32. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Third, the Examiner wholly fails to address a limitation that is expressly recited in claim 32. Namely, claim 32 expressly notes that the mold is heated "under elevated pressures." However, nowhere in the Examiner's rejection is "elevated pressures" even mentioned. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Fourth, Taccone, the primary reference, makes no mention of heating a mold "under elevated pressures." Additionally, none of the secondary references provide any motivation for mold heating under "elevated pressures." Lastly, Muschoot, the tertiary reference, fails to teach the heating of molds "under elevated pressures." Insofar as "elevated pressures" is wholly absent from the primary, secondary, and tertiary references, it is axiomatic that the combination of all of these references will likewise be deficient of any teachings mold-heating "under elevated pressures."

For at least these reasons, claim 32 is allowable over the cited references.

**v. Claim 40**

Claim 40 recites:

40. The method of claim 35, and wherein the mold is formed from sand and a degradable binder, and dislodging pieces of the mold from the casting includes combusting the binder of the mold as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

First, claim 40 depends from allowable claim 35. As such, for that reason alone, claim 40 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 40. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 40. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Third, the Examiner wholly fails to address a limitation that is expressly recited in claim 40. Namely, claim 40 expressly notes that the mold is heated "under elevated pressures." However, nowhere in the Examiner's rejection is "elevated pressures" even mentioned. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

Fourth, Taccone, the primary reference, makes no mention of heating a mold "under elevated pressures." Additionally, none of the secondary references provide any motivation for mold heating under "elevated pressures." Lastly, Muschoot, the tertiary reference, fails to teach the heating of molds "under elevated pressures." Insofar as "elevated pressures" is wholly absent from the primary, secondary, and tertiary references, it is axiomatic that the combination of all of these references will likewise be deficient of any teachings mold-heating "under elevated pressures."

For at least these reasons, claim 40 is allowable over the cited references.



**vi. Claim 42**

Claim 42 recites:

42. The method of claim 35, wherein dislodging the mold from the casting comprises removing at least a portion of the mold from the casting.

First, claim 42 depends from allowable claim 35. As such, for that reason alone, claim 42 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 42. The rejection simply notes Taccone and Muschoot as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 42. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Third, the Examiner wholly fails to address a limitation that is expressly recited in claim 42. Namely, claim 42 expressly notes that the the dislodging of the mold comprises the step of "removing at least a portion of the mold." However, nowhere in the Examiner's rejection is the partial removal of the mold even mentioned. As such, the rejection is again deficient. *See*, MPEP 706.02(j); 37 CFR 1.104(c)(2).

For at least these reasons, claim 42 is allowable over the cited references.

4. Whether claims 9, 16, 28, 41, and 43-47 are unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Schneider, Swanson, Schimmel, or Heine, and further in view of Easwaran.

**i. Claim 9**

Claim 9 recites:

9. The method of claim 1, wherein at least a portion of the degraded mold is dislodged from the casting prior to heat treating the casting.

Claim 9 depends from allowable claim 1. As such, for that reason alone, claim 9 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 9. The rejection simply notes Taccone and Easwaran as the primary and tertiary references, respectively. However, apart from reciting that claim 9, among others, is being rejected "either in view of Bergna, Swanson et al., Schimmel et al. or Heine et al.[]" the Examiner never specifies which of these references is being applied to claim 9. As such, the rejection is facially deficient for failing to particularly point out the secondary reference that is being used to reject claim 9. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

For at least these reasons, claim 9 is allowable over the cited references.

**ii. Claim 16**

Claim 16 recites:

16. The method of claim 12, wherein at least a portion of the mold is dislodged from the casting prior to heat treating the casting.

Claim 16 depends from allowable claim 12. As such, for that reason alone, claim 16 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 16. The rejection simply notes Taccone and Easwaran as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 16. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

For at least these reasons, claim 16 is allowable over the cited references.

**iii. Claim 28**

Claim 28 recites:

28. The method of claim 23, wherein pieces of the mold are dislodged from the casting prior to heat treating the casting.

First, claim 28 depends from allowable claim 23. As such, for that reason alone, claim 28 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 28. The rejection simply notes Taccone and Easwaran as the primary and tertiary references, respectively. As such, the rejection is

facially deficient for failing to particularly point out which secondary reference is being used to reject claim 28. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

For at least these reasons, claim 28 is allowable over the cited references.

**iv. Claim 41**

Claim 41 recites:

41. The method of claim 35, wherein the pieces of the mold are dislodged from the casting prior to heat treating the casting.

First, claim 41 depends from allowable claim 35. As such, for that reason alone, claim 41 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 41. The rejection simply notes Taccone and Easwaran as the primary and tertiary references, respectively. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 41. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

For at least these reasons, claim 41 is allowable over the cited references.

**v. Claim 43**

Claim 43 recites:

43. The method of claim 35, wherein the fluid media is directed at the exterior walls of the mold when the casting is partially solidified.

First, claim 43 depends from allowable claim 35. As such, for that reason alone, claim 43 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, while the Examiner cites Easwaran as allegedly teaching "the use of combined casting and heat treatment when the casting is partially solidified[,]" a close review of Easwaran reveals that there is no express teaching in Easwaran on "partially solidif[ying,]" as expressly recited in claim 43. As such, Easwaran fails to teach or suggest the limitation of claim 43. Thus, contrary to the Examiner's contention, the combination of cited references fails to teach an expressly-recited element of claim 43.

Third, the Examiner's rejection fails to identify which of the secondary references are being applied to claim 43. The rejection simply notes Taccone and Easwaran as the primary and tertiary references, respectively. The rejection never specifies which of the secondary references is being used as the basis for rejecting claim 43. As such, the rejection is facially deficient for failing to particularly point out which secondary reference is being used to reject claim 43. *See*, MPEP 706.02(j), 37 CFR 1.104(c)(2).

Fourth, presuming that Swanson is used as the secondary reference to reject claim 43, Swanson teaches pressurized fluids being injected in boreholes. To the contrary, claim 43 teaches pressurized fluids being directed to the exterior walls. Indeed, insofar as Swanson is directed to boreholes, Swanson cannot teach fluids being directed to the exterior walls, since boreholes typically do not have exterior walls. As such, the use of Swanson to reject claim 43 is improper.

For at least these reasons, claim 43 is allowable.

**vi. Claim 44**

Claim 44 recites:

44. A method of removing a mold from a casting formed therein, comprising: directing an energized stream at the mold when the casting is partially solidified; and, dislodging at least a portion of the mold from the casting.

Applicant respectfully submits that the subject matter of claim 44 is allowable over the cited references. As an initial matter, the Examiner's rejection fails to identify which references are being applied to claim 44. Specifically, the Examiner lists nine (9) claims and rejects them as a group "in view of either Schneider et al., Swanson et al., Schimmell et al. or Heine et al." In other words, the Examiner has not provided a proper rejection under MPEP 706.02(j) or 37 CFR 1.104(c)(2).

Second, while the Examiner cites Easwaran as allegedly teaching "the use of combined casting and heat treatment when the casting is partially solidified[.]" a close review of Easwaran reveals that there is no express teaching in Easwaran on "partially solidif[ying,]" as expressly recited in claim 44. As such, Easwaran fails to teach or suggest the limitation of claim 44. Thus, contrary to the Examiner's contention, the combination of cited references fails to teach an expressly-recited element of claim 44.

Third, the secondary references are drawn from non-analogous art, thereby making the combination improper. *See*, MPEP 2141(a); MPEP 2145. Specifically,

Taccone is directed to metal founding (U.S. Class 164). Unlike Taccone, Swanson is from a wholly unrelated field, namely, wells (U.S. Class 166). More specifically, Swanson is directed to boreholes in rock formations, and is nonanalogous to mold removal from castings. Insofar as Taccone and Swanson are from non-analogous fields, their combination is improper. *See*, MPEP 2141(a). Additionally, since the specific teachings in both references shows clear differences in structure and function, their combination is all-the-more improper. *See, In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973).

As for Schimmel, unlike Taccone, it is classified under ammunitions and explosives (U.S. Class 102) and more specifically under terrain clearance (U.S. Sub-Class 302). Insofar as Taccone and Schimmel are from non-analogous fields, their combination is, again, improper. MPEP 2141(a).

For at least these reasons, claim 44 is allowable over the cited references.

**vii. Claim 45**

Claim 45 recites:

45. The method of claim 44, wherein the energized stream includes at least one stream selected from pressurized fluids, explosives, electromagnetic energy, particles and combinations thereof.

First, claim 45 depends from allowable claim 44. As such, for that reason alone, claim 45 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, Taccone provides no motivation to extend Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 45 is allowable.

**viii. Claim 46**

Claim 46 recites:

46. The method of claim 44, further comprising scoring the mold to weaken the mold.

Claim 46 depends from allowable claim 44. As such, for that reason alone, claim 46 includes each and every limitation of claim 44, and therefore should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, Taccone's "notch 115" is not "to weaken the mold." Specifically, Taccone's "notch 115" is "molded in the surface of the molds for purposes of controlling and registering the mold with the mold breaker." As such, Taccone's "notch 115" does not read on the "score lines" of claim 3.

Third, Taccone provides no motivation to extend Taccone's "notch 115" to "weaken the mold" as recited in claim 3. Given the absence of any suggestion or motivation in Taccone, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 46 is allowable.



**ix. Claim 47**

Claim 47 recites:

47. The method of claim 44, further comprising heating the casting to cause thermal expansion of the casting.

First, claim 47 depends from allowable claim 44. As such, for that reason alone, claim 47 should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Second, Taccone provides no motivation to combine Taccone with any of the other cited references, and Taccone further provides no motivation to extend the teachings of Taccone to any non-solid-contact mold-breaking approach. Given this, the Examiner has failed to establish a prima facie case of obviousness. *See*, MPEP 2143.

Thus, for at least these reasons, claim 47 is allowable.

5. Whether claim 48 is unpatentable under 35 U.S.C. § 103(a) over Taccone, in view of either Schneider, Swanson, Schimmel, or Heine, and further in view of Easwaran and Muschoot.

**i. Claim 48**

Claim 48 recites:

48. The method of claim 44, wherein dislodging at least a portion of the mold includes removing at least a portion of a core from the casting.

Claim 48 depends from allowable claim 44. As such, for that reason alone, claim 48 includes each and every limitation of claim 44, and therefore should be allowable. 35 U.S.C. 112, ¶¶ 3 & 4.

Thus, for at least these reasons, claim 48 is allowable.

*C. Conclusion*

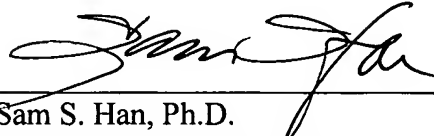
Each and every claim has been addressed separately because the claims do not stand or fall as a group. Rather, each and every claim is separately patentable, as specifically argued above. It should be understood that, for the arguments relating to dependent claims, all of the arguments that relate to the base claims are incorporated by reference into the arguments that relate to the dependent claims, since each dependent claim includes the limitations of its respective base claim. *See*, 35 U.S.C. § 112.

In view of the allowability of all claims, Applicant respectfully solicits favorable action. Alternatively, in view of the procedural deficiencies related to this application, Applicant respectfully requests reopening of prosecution and curing of the Examiner's procedural defects.

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Respectfully submitted,

Date: 23 Nov 2005

  
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## VIII. CLAIMS APPENDIX

Clean copy of the claims, in accordance with MPEP 1205.02.

1. A method of removing a mold from a casting formed therein, comprising:  
directing an energized stream at the mold to cause the mold to degrade; and dislodging at  
least a portion of the degraded mold from the casting.

2. The method of claim 1, further comprising scoring the mold by forming  
score lines in exterior walls of the mold.

3. The method of claim 2, wherein the score lines are placed in  
predetermined locations for breaking down and dislodging portions of the mold from the  
casting.

4. The method of claim 1, further comprising thermally expanding the  
casting to cause the casting to bear against the mold.

5. The method of claim 4, wherein the casting is expanded by heating the  
casting.

6. The method of claim 5, wherein the casting is heated by an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

7. The method of claim 6, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

8. The method of claim 1, and wherein the mold is formed from sand and a degradable binder that is combusted as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

9. The method of claim 1, wherein at least a portion of the degraded mold is dislodged from the casting prior to heat treating the casting.

10. The method of claim 1, wherein the energized stream comprises a pressurized fluid.

11. The method of claim 10, wherein the pressurized fluid comprises heated air, thermal oils or water.

12. A method of dislodging a mold from a casting formed therein, comprising:  
directing an energized stream at the mold, wherein the energized stream comprises an  
explosive charge detonated at a selected location within exterior walls of the mold; and  
dislodging at least a portion of the mold from the casting.

13. The method of claim 12, wherein the mold is comprised of sand and a  
binder.

14. The method of claim 12, and further including scoring the mold by  
forming score lines in exterior walls of the mold.

15. The method of claim 14, wherein the score lines are operatively placed in  
combination with the explosive charge in predetermined locations for breaking down and  
dislodging portions of the mold from the casting.

16. The method of claim 12, wherein at least a portion of the mold is  
dislodged from the casting prior to heat treating the casting.

17. The method of claim 12, wherein dislodging the pieces of the mold  
comprises heating the casting to cause expansion of the casting.

18. The method of claim 17, wherein heating the casting comprises applying energy to the casting from an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

19. The method of claim 18, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

20. The method of claim 12, and wherein the mold is formed from sand and a degradable binder that is combusted as and the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown and dislodging of the mold from the casting.

21. The method of claim 12, and wherein directing an energized stream at the mold further includes directing a pressurized fluid at exterior walls of the mold.

22. The method of claim 21, wherein the pressurized fluid comprises heated air, thermal oils or water.

23. A method of dislodging a mold from a casting formed therein, comprising:  
stimulating the mold with an energy pulsation; fracturing the mold; and dislodging the  
mold from the casting.

24. The method of claim 23, wherein the energy pulsation is applied as a  
shock wave.

25. The method of claim 24, wherein the shock wave is produced from at least  
one of the following: mechanical means, cannons, pressurized gasses and  
electromechanical means, and a combination thereof.

26. The method of claim 23, and further comprising scoring the mold by  
forming score lines in exterior walls of the mold.

27. The method of claim 26, wherein the score lines are operatively placed in  
predetermined locations for breaking down and dislodging portions of the mold from the  
casting.

28. The method of claim 23, wherein pieces of the mold are dislodged from  
the casting prior to heat treating the casting.



29. The method of claim 23, wherein dislodging the mold from the casting includes heating the casting so as to cause the casting to expand.

30. The method of claim 29, wherein heating the casting comprises applying energy to the coating from an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

31. The method of claim 30, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

32. The method of claim 23, and wherein the mold is formed from sand and a degradable binder and dislodging the mold from the casting comprises combusting the binder as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

33. The method of claim 23, wherein stimulating the casting with a high energy pulsation includes directing a pressurized fluid at exterior walls of the mold with a force sufficient to cause the mold to fracture.

34. The method of claim 33, wherein the pressurized fluid comprises heated air, thermal oils or water.

35. A method of dislodging a mold from a casting formed therein, comprising: moving the mold along a processing path with the casting therein; directing a fluid media at exterior walls of the mold; and dislodging the mold from the casting with the fluid.

36. The method of claim 35, wherein the fluid comprises heated air, thermal oils or water.

37. The method of claim 35, wherein dislodging the pieces of the mold comprises heating the casting to cause expansion of the casting within the mold.

38. The method of claim 37, wherein heating the casting comprises directing energy through the mold at the casting with an energy source selected from the group consisting of radiant energy, inductive energy and combinations thereof.

39. The method of claim 38, wherein the energy source is selected from the group consisting of electromagnetic energy, lasers, radio waves, microwaves, and combinations thereof.

40. The method of claim 35, and wherein the mold is formed from sand and a degradable binder, and dislodging pieces of the mold from the casting includes combusting the binder of the mold as the mold is heated under elevated pressures in an enriched oxygen atmosphere to facilitate breakdown of the mold.

41. The method of claim 35, wherein the pieces of the mold are dislodged from the casting prior to heat treating the casting.

42. The method of claim 35, wherein dislodging the mold from the casting comprises removing at least a portion of the mold from the casting.

43. The method of claim 35, wherein the fluid media is directed at the exterior walls of the mold when the casting is partially solidified.

44. A method of removing a mold from a casting formed therein, comprising: directing an energized stream at the mold when the casting is partially solidified; and, dislodging at least a portion of the mold from the casting.

45. The method of claim 44, wherein the energized stream includes at least one stream selected from pressurized fluids, explosives, electromagnetic energy, particles and combinations thereof.

46. The method of claim 44, further comprising scoring the mold to weaken the mold.

47. The method of claim 44, further comprising heating the casting to cause thermal expansion of the casting.

48. The method of claim 44, wherein dislodging at least a portion of the mold includes removing at least a portion of a core from the casting.

**IX. EVIDENCE APPENDIX**

None.

**X. RELATED PROCEEDINGS APPENDIX**

Publicly-available documents for *Consolidated Engineering Company v. Alotech, Ltd., LLC, John Grassi, John Campbell, and Campbell Technologies v. Womble, Carlyle, Sandridge & Rice, PLLC*, Civil Action No. 04-1-01071, currently pending in the Superior Court of Cobb County, State of Georgia, are attached below as exhibits to this section.

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

COBB COUNTY GA.  
FILED IN OFFICE  
04 FEB 12 PM 4:26  
Jay C. Stephenson  
COBB SUPERIOR COURT CLERK

CONSOLIDATED  
ENGINEERING COMPANY,  
Plaintiff,

v.

ALOTECH, LTD., LLC,  
JOHN GRASSI,  
JOHN CAMPBELL, and  
CAMPBELL TECHNOLOGIES,  
Defendants

Civil Action No. 04-1-01071

Jury Trial Requested

**VERIFIED COMPLAINT FOR DAMAGES,  
SPECIFIC PERFORMANCE, AND INJUNCTIVE RELIEF**

Plaintiff Consolidated Engineering Company ("CEC") for its  
Complaint against Defendants Alotech, Ltd., LLC, ("Alotech"); John Grassi  
("Grassi"); John Campbell, ("Campbell"); and Campbell Technologies  
respectfully states the following:

**Nature of Action**

1. CEC is a world leader in heat processing technology with over  
forty years of experience and over fifty-four U.S. and foreign patents. In  
February 2003, while negotiating a joint venture opportunity between CEC  
and Alotech, Alotech's president and then majority shareholder, transferred  
his entire interest in Alotech to CEC. Proceeding in part on the well founded

belief that it was the majority shareholder of Alotech, CEC proceeded to invest over \$750,000 in Alotech to fund the research and refinement of a process known as Ablation Technology. Recently, Grassi and Alotech's other shareholders have sought to repudiate Grassi's stock transfer to CEC, thus freezing CEC out of the company and thus claiming the Ablation Technology for itself. Alotech's stated intention to sell all or a portion of Alotech or the Ablation Technology to a third party motivates the recent actions of Alotech and its shareholders.

**Parties, Jurisdiction, and Venue**

2. CEC is a Georgia company with its worldwide and U.S. headquarters located in Kennesaw, Georgia.

3. Alotech is an Ohio limited liability company with its principal place of business located at 1558 Ridenour Parkway, Kennesaw, Georgia 30152 in Cobb County. Alotech may be served by delivering the Summons and Complaint to its registered agent at:

1932 Service Corp.  
50 Public Square, Suite 1300  
Cleveland, Ohio 44113

4. Jurisdiction over Alotech is proper in that it is a resident of Georgia, and because this Court has jurisdiction over Alotech pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.



5. Grassi is a Georgia resident residing at 1558 Ridenour Parkway, Kennesaw, Georgia 30152 in Cobb County. Grassi may be served by delivering the Summons and Complaint to:

1558 Ridenour Parkway  
Kennesaw, Georgia 30152

6. Jurisdiction over Grassi is proper in that he is a resident of Georgia residing in Cobb County.

7. Campbell is a resident of West Malvern in the United Kingdom and may be served by delivering the Summons and Complaint to:

Park Road  
West Malvern WR14 4BJ  
United Kingdom

8. This Court has jurisdiction over Campbell pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.

9. Campbell Technologies is a United Kingdom corporation and may be served by delivering the Summons and Complaint to:

Park Road  
West Malvern WR14 4BJ  
United Kingdom

10. This Court has jurisdiction over Campbell Technologies pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.

11. Venue is proper in this Court for all Defendants pursuant to O.C.G.A. §9-10-93.

**Factual Background**

12. CEC is a world leader in heat processing technology with over forty years of experience and over fifty-four U.S. and foreign patents. CEC's specialized industrial foundry systems have been used around the world by companies such as Ford Motor Company, Daimler-Chrysler (Mercedes), Barvarian Motor Works (BMW), to precision manufacture heat treated aluminum parts.

13. In order to maintain its competitive edge over the competition, CEC invests heavily in research and development. Over the past Five years, CEC has invested over \$1,700,000 to setup a state of the art research facility at its U.S. headquarters in Kennesaw, Georgia. Automobile manufacturers from around the world have conducted extensive research and development at CEC's testing facility.

**Professor John Campbell**

14. In advancement of CEC's research strategy it sponsored Professor John Campbell's research relating to the heat treatment of aluminum alloys. Campbell conducted the research at the University of Birmingham in the United Kingdom, where he is a professor. CEC paid

over £110,000 to have this research performed, which was completed on or around March 2003.

15. During the course of Campbell's research, he became intimately familiar with CEC's proprietary technology, plans for future research, and its strategic business plans so his research would serve the best interests of the company. Campbell was a trusted business and technical advisor to CEC and its senior management.

16. The research that Campbell performed for CEC in 1999 to 2002 time frame was the technical foundation for a new ablation forming technique for use with aluminum alloys. Through this ablation technique, a knife like water stream is used to rapidly quench the molten aluminum alloy and simultaneously remove the casting.

#### **Joint Venture Discussions**

17. Alotech was incorporated in January 1999 with Grassi and Campbell Technologies as its sole members. Grassi was Alotech's majority stakeholder, owning a fifty-one percent interest and serving as its President and Chief Executive Officer (CEO). Campbell Technologies owns the remaining forty-nine percent of Alotech. Upon information and belief, John Campbell is the president, majority shareholder, and controlling person of Campbell Technologies.

18. With the intent to form a continuing business relationship, CEC and Alotech entered into a Confidential Disclosure Agreement on December 13, 2002, that would permit the exchange of high level business information so a deal could be evaluated. A true and accurate copy of which is attached hereto as Exhibit A.

19. Beginning shortly thereafter and continuing through January 2004, CEC and Alotech have actively negotiated a joint venture between the two companies.

20. As part of their discussions, CEC and Alotech entered into a written agreement on February 20, 2003 that established a joint venture framework. This agreement called for CEC to invest \$2,000,000 in a newly formed joint venture company and receive a thirty percent (30%) ownership interest. Alotech's planed contribution to capital was an undetermined amount of money and its technical know-how for a seventy percent (70%) ownership interest in the joint venture company. A true and accurate copy of this agreement is attached hereto as Exhibit B.

21. With both parties impatient to pursue their business relationship in order to capture opportunities in the market place, Grassi transferred his fifty-one percent (51%) interest in Alotech to CEC as memorialized in his written agreement dated February 21, 2003. Thus, making CEC the majority

owner of Alotech. A true and accurate copy of Grassi's ownership transfer is attached hereto as Exhibit C.

22. Immediately thereafter CEC and Alotech teamed up to further develop the technology known as the Ablation Process and to capitalize on the market potential for this technology. CEC provided Alotech office space at its Kennesaw headquarters and Alotech shifted its base of operations from Ohio to Kennesaw. During this same time frame, CEC invested an additional \$750,000 in Alotech's research and refinement of the Ablation Technology since February 21, 2003 believing that it was the majority shareholder of Alotech.

#### **The Hydro Aluminum Deal**

23. In anticipation of having Hydro Aluminum Deutschland GmbH fund additional research to evaluate the Ablation Technology's application to its process, CEC and Alotech made their own agreement regarding the marketing, distribution, and licensing of rights of the Ablation Technology. A true and accurate copy of the parties Product Marketing, Distribution and License Agreement dated June 12, 2003 is attached hereto as Exhibit D.

24. Shortly thereafter on June 30, 2003, Hydro Aluminum, CEC, and Alotech signed a Letter of Intent agreement memorializing their intent to explore and test the application of the Ablation Technology for

manufacturing certain of Hydro Aluminum's cast automotive parts (the Hydro Project). Hydro Aluminum paid CEC \$90,000 to perform this testing. A true and accurate copy of the Hydro Letter of Intent is attached hereto as Exhibit E.

25. CEC personnel and Grassi on behalf of Alotech performed the Hydro Project testing at CEC's research and development center. During September 2003, Hydro Aluminum executives traveled from Germany to Atlanta to review the progress of the Hydro Project and concluded that the Ablation Technology was not sufficiently developed for use in its operation at this time.

26. While the Hydro project was ongoing, CEC and Alotech continued their negotiations for a joint venture and on August 18, 2003 the parties signed a second outline for a joint venture. A true and accurate copy of the Outline for Joint Venture is attached hereto as Exhibit F.

**Campbell and Campbell Technologies  
Attempt to Squeeze CEC Out of Alotech**

27. By letter dated October 29, 2003 from their legal counsel, Campbell and Campbell Technologies asserted formally in writing for the first time that Grassi's transfer of ownership in Alotech to CEC that occurred more than eight months earlier was ineffective. Campbell and Campbell Technologies contended that under the terms of Alotech's

Operating Agreement no transfer of ownership could be made without their consent.

28. CEC's counsel responded to Campbell's counsel on November 18, 2003 that they were evaluating Campbell's claim.

29. Campbell further demanded through his counsel's letter dated December 22, 2003 that CEC either relinquish or clarify its ownership claim in Alotech.

**Intellectual Property Funded By CEC**

30. On or around July 9, 2003 Alotech filed a non-provisional patent application with the United States Patent and Trademark Office, entitled "Mold-Removal Casting Method and Apparatus." Upon information and belief, this patent application embodies core technology, known as Ablation Technology, the development of which was funded by CEC.

31. Upon information and belief, Grassi, Campbell, and Alotech have filed other yet to be identified U.S. and foreign patent applications embodying core technology, known as Ablation Technology, the development of which was funded by CEC.

**Alotech Threatens To Sell Its Technology to Alcoa**

32. Beginning in early December 2003, and repeated numerous times since then, Grassi, has threatened that if CEC did not immediately agree to Alotech's demands for a joint venture agreement that Alotech would sell all of its Ablation Technology, including the patents developed with CEC's funding, to Alcoa, Inc.

**Count I – Fraud  
(Against all Defendants)**

33. The allegations contained in Paragraphs 1 through 32 are incorporated herein by reference.

34. Grassi and Alotech intentionally misrepresented to CEC Grassi's authority to transfer his Alotech ownership.

35. Upon information and belief, upon determining that Alotech's Operating Agreement required the consent of its remaining shareholders to effectuate a transfer of ownership, Defendants conspired to and did intentionally conceal their knowledge of this requirement in order to induce CEC to fund, or continue funding, the research and implementation of the Ablation Technology.

36. Defendants knew, or should have known, that at all times since February 21, 2003 that CEC thought it owned fifty-one percent of Alotech, which is why CEC continued to fund Alotech's development of the Ablation



Technology, a benefit that Alotech willfully accepted. At no time did Alotech ever repudiate any benefit that CEC conferred on it, thus leading CEC to believe that Alotech and its shareholders acquiesced in Grassi's assignment to CEC.

37. In justified reliance on Defendants' representations, CEC invested more than \$750,000 in Alotech to fund the development of the Ablation Technology. Accordingly, CEC has been damaged in an amount not yet fully determined, but at least \$750,000.

38. Defendants' intentional misrepresentations were made with wilful, wanton, and reckless disregard for the truth of the matter with a deliberate intent to harm CEC. CEC should therefore be awarded exemplary damages in an amount sufficient to punish them for their conduct.

**Count II – Constructive Fraud**  
**(Against all Defendants)**

39. The allegations contained in Paragraphs 1 through 38 are incorporated herein by reference.

40. Grassi and Alotech misrepresented to CEC Grassi's authority to transfer his Alotech ownership, and at all times thereafter Defendants concealed their belief that the transfer was inoperative in order to induce CEC's further financial investment in the Ablation Technology.

41. Upon information and belief, upon determining that Alotech's Operating Agreement required the consent of its remaining shareholders to effectuate a transfer of ownership, Defendants conspired to and did intentionally conceal their knowledge of this requirement in order to induce CEC to fund, or continue funding, the research and implementation of the Ablation Technology.

42. Without knowledge that Alotech's operating agreement required the approval of the other shareholders to approve Grassi's transfer to CEC, CEC invested more than \$750,000 in Alotech to fund its development and refinement of the Ablation Technology.

43. Defendants' misrepresentations were made with wilful, wanton, and reckless disregard for the truth of the matter with a deliberate intent to harm CEC. CEC should therefore be awarded exemplary damages in an amount sufficient to punish Defendants for their conduct.

**Count III – Breach of Contract**  
**(Against Grassi)**

44. The allegations contained in Paragraphs 1 through 43 are incorporated herein by reference.

45. By written agreement dated February 21, 2003, Grassi transferred his fifty-one percent (51%) interests in Alotech to CEC, which consists of 1 unit of Class A ownership and 525 units of Class B ownership.

46. Grassi has breached this agreement by failing to transfer his Class A and B shares to CEC.

47. CEC has performed all of its duties and obligations under the February 21, 2003 agreement.

48. CEC has been harmed as a direct result of Grassi's breach.

**Count IV – Specific Performance**  
**(Against All Defendants)**

49. The allegations contained in Paragraphs 1 through 48 are incorporated herein by reference.

50. Ownership of Alotech is a unique property right, for which no adequate substitute or replacement exists.

51. After Grassi transferred his ownership interests to CEC, Grassi and Campbell made numerous in person visits to CEC's worldwide headquarters in Kennesaw. During these in-person meetings it was discussed and common knowledge to Grassi and Campbell (personally and as Campbell Technologies' representative) that CEC thought it was a fifty-one percent shareholder of Alotech.

52. With full knowledge of Grassi's stock transfer to CEC, Campbell (personally and as Campbell Technologies' representative) ratified the transfer by encouraging CEC's continued investment in Alotech to fund the development of the Ablation Technology.

53. Defendants should therefore be required to specifically perform the ownership transfer of Grassi's ownership units to CEC.

**Count V – Restitution  
(Against All Defendants)**

54. The allegations contained in Paragraphs 1 through 51 are incorporated herein by reference.

55. If it is determined that CEC is not a majority shareholder of Alotech, CEC should be refunded the more than \$750,000 it invested in Alotech as working capital for the development of the Ablation Technology, plus any other costs or expenses.

**Count V – Injunctive Relief  
(Against All Defendants)**

56. The allegations contained in Paragraphs 1 through 55 are incorporated herein by reference.

57. CEC is likely to prevail upon the merits of this action and thus have determination made on the merits that it is the majority shareholder of Alotech (and thus permitted input regarding the use of the Ablation Technology), that its more than \$750,000 of funding went for the development of the Ablation Technology, and thus entitled to ownership rights in the Ablation Technology.

58. The harm that CEC would suffer if Alotech transferred away its key assets, namely the patent applications dealing with the Ablation Technology, which could never be regained again far out weighs any prospective harm that Alotech would suffer if this Court was to enjoin any such transfer.

59. Public policy favors the insurance of injunctive relief in order to preserve the status quo until this matter can be resolved on the merits.

60. Temporary and preliminary injunctive relief should therefore issue enjoying Defendants, and all those in active concert with them, from transferring any patent, patent application, or other unregistered technology to any third-party.

#### **Jury Trial Demanded**

61. CEC exercises its Seventh Amendment right of trial by jury.

#### **Prayer For Relief**

Wherefore, CEC prays for a jury trial on all issues so triable and for the following relief:

- 1) That this Verified Complaint be treated as an Affidavit.
- 2) That a Temporary Restraining Order, Preliminary and Permanent Injunction issue enjoining Defendants, and all those in active concert

with them, transferring any patent, patent application, or other unregistered technology to any third-party.

- 3) That judgment be entered requiring Defendants' specific performance by transferring Grassi's fifty-one percent ownership in Alotech to CEC, and Alotech's recording of this transfer in its ledger.
- 4) Alternatively:
  - a) that CEC be granted restitution and Alotech be required to return the \$750,000 that CEC invested in Alotech to fund the development of the Ablation Technology; and
  - b) that CEC be awarded its monetary damages that it has suffered as a direct result of Defendants' fraud.
- 5) That judgment be entered against all Defendants, jointly and severally, for the damage they have caused CEC in an amount not yet fully determined, but in any event at least \$750,000;
- 6) That judgment be entered against all Defendants, jointly and severally, for exemplary damages in an amount determined by the jury sufficient to punish Defendants for their conduct; and
- 7) For such other relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Luke Anderson", written over a horizontal line.

Timothy H. Kratz

Ga. Bar No. 429287

Luke Anderson

Ga. Bar No. 018330

John A. Lockett III

Ga. Bar No. 455549

**McGuireWoods LLP**

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Suite 2100

Atlanta, Georgia 30309-7649

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Facsimile 404.443.5599

**IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA**

**CONSOLIDATED  
ENGINEERING COMPANY,**  
Plaintiff,

v.

**ALOTECH, LTD., LLC,  
JOHN GRASSI,  
JOHN CAMPBELL, and  
CAMPBELL TECHNOLOGIES,**  
Defendants

Civil Action No. \_\_\_\_\_

**VERIFICATION**

I, Paul M. Crafton, am the Senior Vice President of Consolidated Engineering Company, the Plaintiff in this action. I have been duly authorized to make this verification on behalf of the Plaintiff. I have reviewed Plaintiff's allegations contained in this Complaint and know them to be true, with the exception of the allegations made upon information and belief, which Plaintiff believes are true.

**Consolidated Engineering Company**

By: \_\_\_\_\_

Paul M. Crafton,  
Senior Vice-President  
Consolidated Engineering Company

\_\_\_\_\_  
Notary

My commission expires on: 1-20-08.

(Seal)



### **Exhibit Index**

1. Confidential Disclosure Agreement ..... Exhibit A
2. Joint Venture Frame Work Dated February 20, 2003 ..... Exhibit B
3. Grassi's Stock Transfer ..... Exhibit C
4. Product Marketing, Distribution and License Agreement .... Exhibit D
5. Hydro Aluminum Letter of Intent ..... Exhibit E
6. Joint Venture Outline Dated August 18, 2003 ..... Exhibit F

## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between Alotech Ltd., a company having a principal place of business at Two Commerce Park Square, 23220 Chagrin Blvd., #105, Cleveland, Ohio 44122 ("Discloser") and Consolidated Engineering Company, Inc. a corporation having a principal place of business at 1971 McCollum Parkway, Kennesaw, Georgia 30144-3637 ("Recipient") effective as of the latter date of execution below.

WHEREAS, Discloser and Recipient (hereinafter jointly referred to as the "Parties" or individually as "Party") are contemplating a venture or business arrangement (the "Venture");

WHEREAS, Discloser may find it necessary or desirable from time to time to disclose to Recipient certain technical, manufacturing, marketing, and sales information in written, oral, and/or machine readable form; and

WHEREAS, Discloser considers a significant portion of such material to be valuable, proprietary, secret; and confidential.

NOW THEREFORE, in consideration of the mutual understandings hereinafter set forth, the parties agree that the Confidential Information which will be delivered to certain employees of Recipient will be subject to the following terms and conditions:

(1) All information provided by Discloser to Recipient pertaining to casting techniques employing aggregate molds, methods for manufacturing cast metal parts and related equipment therefor, whether the source of that information is Discloser or a subsidiary, parent, or affiliate of Discloser, will be deemed to be "Confidential Information" when it is properly labeled as such. Any information that may be verbally or visually disclosed by Discloser to Recipient should be briefly summarized in writing, by either party, with a properly labeled copy of such writing promptly provided to the other party thereafter.

(2) Recipient will use any such Confidential Information solely for the purpose of evaluating the Venture, and Recipient will not, under any circumstances, use the Confidential Information of the Discloser in any manner contrary to the best interests of, detrimental to, or in competition with Discloser.

(3) Recipient agrees to safeguard all Confidential Information disclosed by Discloser with the same degree of care with which it protects its own confidential information and that, without the written consent of Discloser, Recipient will not use such Confidential Information for its own benefit other than for the purposes of evaluating the Venture, and will not disclose such Confidential Information to any third party unless required to do so by competent legal authority. In the event Recipient receives notice of any legal proceeding to compel disclosure of Confidential Information provided by Discloser, it will promptly notify Discloser of such fact and afford it the opportunity to contest such proceeding.

(4) Upon the written request of Discloser, Recipient will: promptly return to Discloser all tangible forms of the Confidential Information provided by Discloser, including any copies made by the Recipient, destroy any software, machine readable code or other materials developed using the Confidential Information, and will not thereafter use or disclose the Confidential Information provided by Discloser, except as expressly permitted by this Agreement. Recipient shall also treat as confidential, for the term specified below, any documents, memoranda, notes, analyses, compilations, studies, and other writings that Recipient or its advisors prepare based on materials contained in Discloser's Confidential Information, though such documents et al shall remain the property of Recipient.

(5) Confidential Information may not be mechanically copied or otherwise reproduced without the express written permission of Discloser, except for such copies as Recipient may require pursuant to this Agreement for internal use in connection with its assessment of a Venture. To the extent that the original of such Confidential Information, as provided to Recipient, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized by Discloser prior to reproduction.

(6) All Confidential Information disclosed by Discloser to Recipient will remain the exclusive property of Discloser, and all rights to such Confidential Information will be held in trust by Recipient for the benefit of Discloser. Neither this Agreement nor the disclosure or revelation of Confidential Information hereunder will constitute or be construed as granting to Recipient, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which Discloser now or hereafter has title, or as imposing on Recipient any obligation, except as specified in this Agreement. Discloser does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.

-- (7) Recipient may provide access to the Confidential Information only to the employees having a need to know same for the aforesaid Venture evaluation purposes.

(8) Should access to the Confidential Information of Discloser by one or more of the employees of Recipient lead to improvement inventions in which one or more of such employees is named an inventor, Recipient agrees to instruct the employee to assign his or her rights in such improvement invention to Discloser. Recipient reserves a royalty-free, non-exclusive license, without right to sublicense, to any such improvement invention - but no license to any inventions of Discloser.

(9) If Discloser authorizes inspection of its facilities which employ technical information and know-how which may be used in the Venture, Recipient will observe the same confidentiality and use restrictions provided in this Agreement with respect to any such technical information and know-how which may come to the attention of, or be disclosed to, Recipient's employees during any such plant visit whether through discussions with such employees or through visual inspection of such plant facilities or otherwise.

(10) Discloser acknowledges that much of the Confidential Information provided pursuant to this Agreement will be obtained from its business records. Discloser believes its records are complete and accurate, but make no representations as to the completeness or accuracy of the Confidential Information therein contained and assume no responsibility or liability for the conclusions that may be derived from such Confidential Information. Discloser may not be held liable to Recipient for any errors or omissions in any of the Confidential Information disclosed to the other, nor for any liability to Recipient arising out of the use of any Confidential Information disclosed pursuant to this Agreement.

(11) The obligations set forth above will not be construed to prohibit:

- a. The use or disclosure of any information previously known to the Recipient or independently developed by employees or agents of Recipient who have no access, direct or indirect, to any Confidential Information provided by Discloser;
- b. The use or disclosure of any information which is or becomes publicly known through no wrongful act of the Recipient;

c. The use or disclosure of any information which is received from a third party which is under no confidentiality obligation to Discloser which provided the Confidential Information; or

d. The release of such Confidential Information is expressly agreed to and authorized by the Discloser as the case may be.

(12) This Agreement will remain in effect for a period of two (2) years from the date hereof unless sooner terminated or superseded by written agreement of the Parties; however, the term of this Agreement is subject to good faith negotiation between the parties to decrease the term of the Agreement. The confidentiality obligations imposed by this Agreement with respect to Confidential Information received prior to its termination will survive the termination hereof for a period of five (5) years.

(13) No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

(14) The validity, interpretation and effect of this Agreement will be governed by the laws of the State of Ohio.

(15) No amendment to the terms and conditions of this Agreement will be valid and binding on the Parties hereto unless made in writing and signed by an authorized representative of each of the Parties.

(16) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors, assigns, subsidiaries, and affiliates.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year shown.

Alotech, Ltd.

By: 

Name: John R. Grassi

Title: President & CEO

Dated: 13th Dec 2002

Consolidated Engineering Company, Inc.

By: 

Name: Paul M. Craffon

Title: Sr. Vice President

Dated: 12 December 2002

## CONFIDENTIAL DOCUMENT

### Agreement between Alotech, Ltd and Consolidated Engineering Company, Inc.

This Agreement (this "Agreement") is entered into as of the 20<sup>th</sup> day of February, 2003, by and between Consolidated Engineering Company, Inc., a Georgia corporation ("CEC"), and Alotech Ltd. an Ohio company ("Alotech"). The following will outline the basis for the future formal agreement(s) between Alotech and CEC. The basic terms and conditions would be as follows:

#### Alotech & CEC Development of Technology

##### 1. Obligations

- 1.1. Alotech agrees not to sell Alotech to any third party for twelve (12) months from the date above without CEC's written permission or until the Joint Venture is established.
- 1.2. Both parties agree that all figures (dollar amount or percentages) not agreed upon (left blank) by the parties shall be negotiated between the Parties in Good Faith and shall be agreed upon within thirty (30) days from the date above.

##### 2. Joint Venture

- 2.1. Within six (6) months from the date above the parties will try to reach a formal legal binding agreement in establishing a joint venture ("NewCo") that will maximize the strengths of Alotech's Technology including the Ablation Process and allow for rapid commercial development and maximize market penetration for a Commercialized System(s) (including Equipment, Licenses and Services Contracting) for casting high strength components in light alloys. If such agreement is not reached by that date, any further discussions between the parties will be at the option of each party.
- 2.2. During the initial establishment of NewCo, CEC shall be the exclusive supplier to NewCo for all engineering services, Foundry Planing and manufacturing of key components and equipment at standard CEC's cost plus 10%. As NewCo revenues increase, it shall develop and sustain its own internal and independent corporate structure which shall include an engineering services department and continue on developing new commercializing systems and improvements on existing technology.
- 2.3. After the establishment of NewCo., CEC shall have the Right of First Refusal for all equipment for NewCo that CEC manufactures at CEC's cost plus 10%.
- 2.4. Ajax shall have the Right of First Refusal for all equipment for NewCo that CEC does not manufacture or sub-contract.
- 2.5. All ancillary equipment (ei. Conveyors, core machines and similar equipment) provided by CEC to NewCo which is outside the scope of CEC's normal engineering and manufacturing processes or abilities shall be at CEC's cost.
- 2.6. Prior to the establishment of NewCo, Alotech shall/has supply initial development, equipment, key understanding of the "know-how" and technology that will be utilized in the joint venture. Alotech shall educate CEC on Alotech's technology to achieve a viable production line utilizing Alotech's Technology.
- 2.7. Prior to the establishment of NewCo, CEC shall supply additional services for the development of a "Pilot Line." These services shall include, access to CEC's R&D and Engineering Department, access to CEC's Manufacturing Departments, actual building space for the Pilot Line, Raw materials for manufacturing and testing of Pilot Line, Capital, additional necessary equipment, Operational Testing Facility, Estimated costing efficiencies, Testing Confirmations and all other necessary items required to test the concepts of the Pilot Line.

## CONFIDENTIAL DOCUMENT

- 2.8. Both parties agree to use Good Faith and Best Efforts in developing and evaluating all phases of Alotech's technology.
  - 2.9. CEC shall invest \$2 million in NewCo and in return shall receive a 30% ownership in NewCo.
    - 2.9.1. CEC shall be reimbursed or can offset all previous associated costs (including Intellectual Property costs) in developing Alotech's Technology, Ablation Process and establishing NewCo.
  - 2.10. NewCo shall pay Alotech \$\_\_\_\_\_.
  - 2.11. Alotech shall invest \$\_\_\_\_\_ and its present accumulation of know-how of the Ablation Process and Alotech's technology in NewCo and in return shall receive a 70% ownership in NewCo.
  - 2.12. CEC shall have the Right of First Refusal on any transfer of Alotech's ownership rights in NewCo.
  - 2.13. CEC shall have the option to acquire additional percentages of ownership in NewCo from Alotech, up to 49% for \$\_\_\_\_\_ per percentage point.
  - 2.14. Alotech shall have the right of First Refusal on any transfer of CEC's ownership rights in NewCo for \$\_\_\_\_\_ per percentage point.
  - 2.15. CEC shall supply NewCo with normal corporate structure and support, which shall include accounting services, legal consulting, etc., at CEC's cost plus 10 %.
  - 2.16. Any additional income or grants from future potential customers or other sources for the developing Alotech's technology shall be directed to Alotech for accounting purposes and then re-directed to individual projects for that particular customer; after NewCo is established all unused income shall be assigned to it. Alotech will endeavor to provide CEC with accounting information reflecting all additional income or grants relating to the developing Alotech's technology and NewCo from future potential customers or other sources.
3. CEC Obligations
- 3.1. John Grassi
    - 3.1.1. John Grassi shall become a employee of CEC with a monthly salary of \_\_\_\_\_% of \$15,000 per month.
    - 3.1.2. CEC shall pay up to \$8,000 for moving expenses for John Grassi's relocation to Georgia.
  - 3.2. Alotech, Ltd
    - 3.2.1. CEC shall pay Alotech, Ltd. \_\_\_\_\_% of \$15,000 per month until NewCo's revenues reach \$\_\_\_\_\_per month after NewCo is established.
  - 3.3. Office Space
    - 3.3.1. CEC shall have three offices spaces available at CEC for Alotech's personnel.
    - 3.3.2. Utilities, phone, internet access, computers, office supplies are included.
4. Intellectual Property
- 4.1. CEC agrees that any and all technological development and/or improvement(s) made by either party to Alotech's Technology and/or the Ablation Process shall be owned by Alotech.
  - 4.2. CEC agrees it has Confidentiality Agreement(s) or Employee Agreement(s) with all key employees exposed to the Alotech Technology and improvements.

## CONFIDENTIAL DOCUMENT

- 4.3. Both parties agree that all patents and patent applications associated with the Alotech's Technology and/or the Ablation Process shall be assigned to NewCo after it is established.
- 4.4. Alotech shall be reimbursed up to \$\_\_\_\_\_ for transferring all patents and patent applications associated with the Alotech's Technology to NewCo.
- 4.5. During the initial six (6) months; CEC shall pay all cost associated in protecting Technology Rights, this shall include filing new patent applications and all costs associated in prosecuting new patent applications. During the initial six (6) months; Alotech and CEC agree that Jay Moldovanyi of Cleveland shall be the Patent Attorney for such services.
- 4.6. During the initial six (6) months; CEC shall pay all cost associated in any legal action or proceeding instituted by a third party which seeks to challenge or contest the validity, ownership, title or registration of any of the Patent Applications, Patents or Technology, or seeks to challenge, contest or adversely affect either parties' rights to manufacture, use or sell said Technology.
5. **Confidential Information & Non Solicitation of CEC employees**
  - 5.1. Confidentiality. Each party shall keep all information confidential relating to the development of Alotech's Technology, Ablation Process and the joint venture.
  - 5.2. Non-solicitation of Personnel. During the initial six months hereof and for a period of two years after expiration for any reason, CEC agrees not to hire any person or persons who are then employed or have been employed during the term of this agreement by Alotech, and Alotech agrees not to employ any person or persons who are then employed or who have been employed by CEC during the term of this agreement. Alotech shall not, directly or indirectly, (a) recruit or hire, or attempt to recruit or hire, any employee or independent contractor of CEC to leave CEC or to work for a competitor of CEC or to Alotech without CEC written approval. Both parties agree that the definition of "hire" shall not included consulting services.
6. **Joint Venture Breakdown (Before NewCO is established)**
  - 6.1. If CEC determines for any reasons or both parties mutually agree that NewCo or Alotech's technology is not viable.
  - 6.2. CEC shall give written notice to Alotech stating NewCo is not viable
    - 6.2.1. CEC Obligations after written notice is sent to Alotech
      - 6.2.1.1. CEC shall pay John Grassi six (6) months severance of \_\_\_\_\_% of \$15,000 per month and pay Alotech \_\_\_\_\_% of \$15,000 per month for six (6) months; OR
      - 6.2.1.2. CEC shall offer John Grassi a full-time position at CEC at a salary of \$15,000 per month plus benefits.
  - 6.3. If Alotech determines for any reasons that NewCo or Alotech's technology is not viable or for other reasons
    - 6.3.1. Alotech shall give written notice to CEC stating NewCo is not viable
    - 6.3.2. Alotech Obligations after written notice is sent to CEC
      - 6.3.2.1. CEC shall not have to pay John Grassi any severance
      - 6.3.2.2. CEC shall not have to pay Alotech any additional funds
      - 6.3.2.3. Alotech shall reimburse all incurred CEC, including but not limited to Intellectual Property costs during the development stage
  - 6.4. Technology and/or Alotech is Sold to Third Party
    - 6.4.1. In the event that any bona fide third party makes a bona fide offer to purchase or license all or any of the Alotech's Technology, Alotech shall notify CEC in writing of the terms and conditions of such offer and accompany said notice with a true and correct copy of such

## CONFIDENTIAL DOCUMENT

offer, and CEC shall thereafter have ninety (90) days in which to notify Alotech of its intention to exercise its Right of First Refusal, by purchasing the applicable Alotech Technology on the same terms and conditions as contained in the bona fide third party offer

### 6.4.2. Third Party buys Alotech's Technology

6.4.2.1. Alotech shall be reimbursed for all costs for developing the Technology sold.

6.4.2.2. CEC shall be reimbursed for all costs for developing the Technology sold.

6.4.2.3. All addition funds after reimbursement to Alotech & CEC shall be distributed as follows:

6.4.2.3.1. Alotech shall receive 60% of all additional remaining funds

6.4.2.3.2. CEC shall receive 40% of all additional remaining funds

## 7. Miscellaneous Clauses

7.1. Business Conduct. Both parties shall conduct its operations in a manner which will not reflect adversely upon the reputation or credibility of either party.

7.2. Representations. Each party represents and warrants to each other that it has full right and authority to enter into a future legal binding Agreement and that it is not under any pre-existing obligation or obligations inconsistent with the provisions of this proposal. In particular, both parties represents and warrants to each other that it can enter into an Agreement which will not violate any agreements that Alotech may have with any other company.

7.3. Disclosure Agreement. CEC and Alotech entered into a Confidential Disclosure Agreement effectively dated December 13, 2002, a true and correct copy of which is attached hereto and incorporated herein by this reference (and hereinafter referred to as the "Disclosure Agreement").

7.4. Entire Agreement. Unless incorporated under this agreement, this Letter of Intent is the entire agreement between the parties with respect to the subject matter hereof and it supercedes all prior negotiations, representations, understandings or other writings. No revision, modification or amendment of the Agreement shall be binding upon the parties hereto unless reduced to writing and signed by both parties.

7.5. Applicable Law. This Agreement is made in and shall be governed by the laws of the State of Georgia, United State of America.

IN WITNESS WHEREOF, the parties authorize representatives of here to attach their hands of the date first written above.

Consolidated Engineering Company, Inc.

By:   
Franz Ruegg  
CEO & President

Alotech, Ltd.

By:   
John Grassi  
President

(Attached Document - electronic)  
of CEC) 21 Feb 2003



February 21, 2003

To:  
Consolidated Engineering Company

Re: Transfer of Alotech Ownership

In an effort to reach a good faith "deal" with Consolidated Engineering Company (CEC) to proliferate and finish the efforts of commercialization of the ablation technology the ownership of Alotech by John Grassi is being transferred to CEC as of this date.

CEC has the election to return the ownership rights and negotiate with John Grassi at any period. The transfer is an effort to provide CEC the ability in moving forward with current business in reclamation of sand and aggregate systems. Alotech and John Grassi realize CEC has worked in best faith and effort in conducting business matters in trying to reach an agreement to date. An agreement has not been reached creating to many uncertainties for CEC in attempt to develop the technology. Further CEC is trying to reallocate other business opportunities making it difficult for CEC to conduct current business matters. The transfer should provide a stability factor for CEC with present efforts knowing that a financial return is possible with control.

All unsigned patent and patent application including future applications not presently filed will be transferred to Alotech.

It is requested that an original list of companies and contributors of the technology will be fairly compensated after the technology is proven with commercial success.

The implication of the transfer is understood and with sound reasoning is considered the best effort in moving forward by Alotech and John Grassi. John Grassi will make to all reasonable efforts to CEC in helping CEC to commercialize the technology with Alotech his prior partners.

*John R. Grassi*

Shares Transferred of Class B 525 unit  
Shares Transferred of Class A 1 unit

Signed, sealed and delivered  
this 21<sup>st</sup> day of February, 2003  
In the presence of:

*Joseph Henry O'Leary*  
Notary Public

Notary Public, Cherokee County, Georgia  
My Commission Expires July 6, 2004

**CONSOLIDATED ENGINEERING COMPANY, INC.  
PRODUCT MARKETING, DISTRIBUTION AND LICENSE AGREEMENT**

This Product Marketing, Distribution and License Agreement (this "Agreement") is entered into effective June 12<sup>th</sup>, 2003 (the "Effective Date"), by and between Alotech Ltd. a U.S. Company incorporated under the laws of the State of Ohio, located 3364 Stockholm Road Cleveland, OH 44120 (hereinafter "Alotech"); and Consolidated Engineering Company, Inc., a U.S. corporation incorporated under the laws of the State of Georgia, located at 1971 McCollum Parkway, Kennesaw, Georgia 30144 (hereinafter "CEC").

**RECITALS:**

Alotech holds the ownership and Patents Rights to the Ablation Technology (as defined below) and CEC markets and sells foundry products and foundry systems containing components designed and manufactured by them and by third parties; and

Alotech wishes to give CEC and CEC wishes to receive a single exclusive license and the right to provide, to market, distribute, use, sell, sublicense the manufacture, offer for sale and create derivative works of the Ablation Technology and Alotech Patents and Know-How to Hydro Aluminium for the purposes of the Project and

In consideration of the mutual covenants and obligations contained below in this Agreement, the parties hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing Recitals are incorporated herein as a part of this Agreement. Each of the parties agrees that the Recitals are true and accurate in all material respects.

2. **DEFINITIONS.**

2.1. "Ablation Technology" means (i) any process, equipment or machine used for the manufacturing of a work piece utilizing a water soluble binder composition for manufacturing of a mold or core and then decomposing of said mold or core by a fluid means after pouring molten metal into the mold to form a work piece and (ii) any process, equipment or machine used for the melting, holding or pouring of molten material into a mold or die for the manufacturing of a work piece and (iii) all embodiments described in filed patents or patents applications in the name of Alotech.

2.2. "Alotech Affiliates" any parent company of Alotech, owners of Alotech and any company which in relation to Alotech and/or any parent company of Alotech is a subsidiary undertaking from time to time.

2.3. "Alotech Patents and Know-How" means (a) all patents and patent applications, worldwide, that are owned by Alotech and that are applicable to the Ablation Technology, as well as any divisions, reissues, continuations, renewals, and extensions of such patents and patent applications and (b) all ideas, concepts, technology, inventions, trade secrets and proprietary claims of Alotech or any Alotech Affiliate related to the Ablation Technology and (c) all future patentable and unpatentable developments and improvements made or developed by Alotech, CEC or a Customer during the Term with respect to the Ablation Technology.

2.4. "Product Leads" means any contracts, communications or inquiries or leads from Prospective Customers regarding such Prospective Customers' (i) licensing, purchase or lease of an Ablation Technology or (ii) entering into any other form of financial arrangement related to such entity's ownership, licensing and/or use of the Ablation Technology.

2.5. "Product Proposal" means any offer, quote, proposal or bid presented to an entity for the entity's (i) licensing, purchase or lease of Ablation Technology or (ii) entering into any other form of financial arrangement related to such entity's ownership, licensing and/or use of Ablation Technology.

2.6. "Project" means the project as defined in the letter of intent attached to this Agreement and marked Appendix A (and which for the avoidance of doubt is acknowledged by the parties to be a draft only in respect of the terms of the agreement to be entered into with Hydro Aluminium).

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2.7. "Prospective Customers" means the prospective customers in respect of the Ablation Technology.

2.8. "Right of First Refusal" means in the event of Alotech wishing to sell or license the Alotech Patents and Know-How otherwise than under the terms of this Agreement, the right of CEC to have the first right to purchase and/or license such Alotech Patents and Know-How.

2.9. "System Requirements" means the requirements of the Prospective Customer which shall need to be met by the Parties in respect of the Product Proposal

### 3. APPOINTMENT.

3.1. Appointment. During the Term, Alotech hereby grants to CEC an exclusive license under the Alotech Patents and Know-How to market, distribute, use, sell, manufacture, have manufactured, offer for sale and create derivative works of and improvements to the Ablation Technology, and to sublicense to Hydro Aluminium to do the same, all for the purposes of the Project.

3.2. Acceptance of Appointment. CEC hereby accepts its appointment as specified by Section 3.1 above and agrees to pursue the Project diligently.

3.3. Grant to Form a New Company. During the Term, Alotech hereby grants CEC the sole and exclusive worldwide right to form a new future company or joint venture vehicle with Alotech providing that the terms of such joint venture can be agreed to the satisfaction of both parties. For the avoidance of doubt, (and subject to clause 5) this shall not restrict the ability of Alotech to license the Ablation Technology or the Alotech Patents and Know-How to third parties except to third parties in Europe and NAFTA countries for the following directly cast automotive components namely: Brake Calipers, Steering Knuckle, Hub Carriers and Control Arms

### 4. ALOTECH'S OBLIGATIONS.

4.1. Affiliates and Subsidiaries. During the Term of this Agreement, Alotech will cause Alotech's Affiliates, as well as any other parties with whom Alotech is contractually bound in respect of the Ablation Technology affecting the Project, to agree to be bound by the provisions of Section 3.1 above and Section 4.2 and 4.2 below with respect to the Ablation Technology.

4.2. Indemnification. Alotech agrees to indemnify and hold harmless CEC against any and all liabilities, demands, complaints, claims, actions (including any governmental investigations, complaints and actions) and causes of actions, suits, obligations, encumbrances, losses, damages, costs and expenses (including reasonable attorney's fees) alleging that the Ablation Technology used in the Project infringes on any intellectual property right of any party.

4.3. Alotech in Defense of Patent Rights. In the event of any legal action or proceeding instituted by a third party which seeks to challenge or contest the validity, ownership, title or registration of any of the Alotech Patents and Know-How, or seeks to challenge, contest or adversely affect CEC's rights to manufacture, use or sell the Ablation Technology as specified by this Agreement, Alotech shall proceed to undertake such defense in its own name at its own expense.

4.4. Infringement of Patent Rights. During the term of this Agreement, if either party learns about a technology or use that potentially infringes upon the Alotech Patents and Know-How, and Alotech chooses not to pursue infringement claims, then CEC may choose at its discretion to file infringement actions to protect the Alotech Patents and Know-How, and Alotech's will provide all necessary non-financial assistance to support such claims and actions.

4.5. Representations. Alotech represents and warrants to CEC that Alotech has full right and authority to enter into this Agreement and that Alotech is not under any pre-existing obligation or obligations inconsistent with the provisions of this Agreement.

### 5. RIGHT OF FIRST REFUSAL.

5.1. During the period of ~~three~~ <sup>six</sup> months from the effective date, Alotech grants CEC the Right of First Refusal to purchase or license any of the Alotech Patents and Know-How.

*JK*  
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*Alotech* *CEC*

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5.2. In the event that any bona fide third party (the "Third Party") makes a bona fide offer to purchase or license all or any of the Alotech Patents and Know-How upon terms that Alotech wishes to accept (an "Offer"), Alotech shall notify CEC in writing of the terms and conditions of such Offer and accompany said notice with a true and correct copy of such Offer, and CEC shall thereafter have thirty (30) days in which to notify Alotech of its intention to exercise its Right of First Refusal, by purchasing or licensing the applicable Alotech Patent or Know-How on the same terms and conditions as contained in the Offer (the "Notice").

5.3. If CEC delivers such Notice to Alotech but fails or refuses to perform on the terms and conditions contained in the Offer or if CEC do not deliver any Notice to Alotech then Alotech shall have a further thirty (30) day period (or such period as specified in the Offer) in which to sell or license the applicable Alotech Patents and Know-How to the Third Party on identical terms and conditions as were contained in the Notice. Upon expiration of the further thirty (30) day Period, Alotech may not sell, transfer or license without again, complying with CEC's Right of First Refusal.

5.4. In the event of a sale or license of the applicable Alotech Patents and Know-How to the Third Party which results in a removal of the rights required for the effective operation of this Agreement then the Term shall terminate and subject to clause 8.2 below, neither party shall have any liability to the other in respect of adhering to the terms of this Agreement.

#### 6. PROJECT IMPLEMENTATION.

6.1. Specifications and Requirements. For each Product Proposal, CEC shall obtain or develop System Requirements from or with the Prospective Customer and provide a written copy of these System Requirements to Alotech for its review and approval.

6.2. Revenue share. CEC agrees to pay Alotech consideration for the rights granted herein in an amount equal to fifty percent (50%) of any Exclusivity Fee and/or Annual License Fee received for sublicense and/or any profits generated during the Term of this Agreement. Exclusivity Fee shall mean any royalty paid by any sublicensee's rights for Alotech Patents and Know-How in exchange for any exclusive use or exploitation of the Alotech Patents and Know-How, and Annual License Fee shall mean any fee paid by any sublicensee of the Alotech Patents and Know-How as a royalty paid exclusively for licensing the Alotech Patents and Know-How.

6.3. IV. Establishment. During the term of this Agreement, if the parties form a Joint Venture, both parties shall assign all their rights under this agreement including Revenue under section 6.2 to the Joint Venture.

6.4. Disputes. Any disputes between the parties as to the interpretation of the terms of this Agreement shall be referred to an independent third party arbitrator to be agreed to by the parties and save in the event of manifest error, whose decision shall be final.

6.5. Disclosure. CEC shall have the right to disclose to Hydro Aluminum the Ablation Technology, and Alotech Patents and Know How, as necessary for the Project, and to allow Hydro Aluminum to disclose same to its potential customers, so long as appropriate confidentiality and non-disclosure agreements are executed by each of the respective parties.

#### 7. IMPROVEMENTS.

7.1. Ownership. All intellectual property rights improvements related to Ablation Technology and developed by Alotech and/or CEC shall be owned by Alotech and Alotech shall in good faith protect all rights to such improvements and to file any and all patent applications related to such improvement. The prosecution and maintenance of all such patent applications and related patents shall be controlled by Alotech.

#### 8. TERMINATION PROVISIONS.

8.1. Expiration Date. Subject to clause 5.4, the term of this Agreement shall be five (5) years from the Effective Date (the "Term").

8.2. Effect of Termination. In the event of Alotech terminating this Agreement before the expiry of the Term, they shall honor and fulfill all obligations for all License agreements executed between CEC and Hydro Aluminum (the "CEC Obligations"). In the event of the Term ending as a result of a sale or license of

Alotech CEC

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the Alotech Patents and Know-How as referred to in clause 5.4 then Alotech shall either assign the CEC Obligations of any such license agreements to the third party acquiring the rights referred to or make such other arrangements to comply with the CEC Obligations.

#### 9. MISCELLANEOUS PROVISIONS.

9.1. Miscellaneous: This Agreement shall be governed by, construed under and enforced in accordance with the substantive laws of the State of Georgia. Every provision of this Agreement is intended to be severable, and, if any term or provision hereof is determined to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supercedes all prior and contemporaneous agreements and understandings, oral and written, of the parties concerning the subject matter hereof. Any Section of this Agreement whose terms, conditions or obligations have not been or cannot be fully performed prior to the termination or expiration of this Agreement for any reason shall survive such termination or expiration of this Agreement. In particular and without limitation, the following Sections shall survive along with all definitions required by such Sections: Sections 4.2, 4.3, 6.2 and 8.2.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date above.

Alotech, Ltd.

Consolidated Engineering Company (CEC)

*[Signature]*  
June 12<sup>th</sup> 2003  
By John Grassi  
Alotech CEO & President

*[Signature]*  
June 12<sup>th</sup> 2003  
By Franz Rüegg  
CEC CEO & President

*[Signature]*  
By John Campbell  
Alotech VP Technology

12 June 2003.

## Outline for Joint Venture (Alotech/CEC)


1. Ownership of Joint Venture
  - a. Alotech - 51%
  - b. CEC - 49%
  - c. Either party shall have the Right of First Refusal to buy or acquire any Ownership Rights from the other party.
2. Control of Joint Venture
  - a. Alotech controls the Joint Venture
  - b. Chairman of the Board will be alternating between Alotech and CEC annually
    - i. Proposed Chairman of Board
      1. Alotech - Ed Crawford
      2. CEC - Franz Ruegg
  - c. Exceptions when 50/50 agreement is needed; in the event of a tie the Chairman of the Board shall act like a "Tie Breaker"
    - i. Decided on profit distribution to parties
    - ii. Selling Joint Venture
    - iii. Additional Licenses to either Alotech or CEC
  - d. John Grassi & John Campbell leave, retire or no longer actively manages Joint Venture
    - i. Then CEC controls the Management of the Joint Venture
  - e. If Joint Venture is Sold
    - i. 50/50 agreement need for selling of Joint Venture
    - ii. The final Selling Price shall be apportion to the parties based on their percentage of ownership
      1. At the time of the sale the majority share owner shall receive a "premium" (market will determine actual amount at time of transfer) for the transfer of the majority shares to a 3<sup>rd</sup> party buyer
3. Contribution
  - a. Alotech License - Intellectual Property Rights, Past & Future Developments and Improvements related to the Ablation Technology including pouring and melting station technology
  - b. CEC - \$2 Million (Contribution after March 2003)
  - c. In the event that CEC's contribution (\$2 Million) is exhausted and additional 3<sup>rd</sup> party contribution is not sufficient and CEC wishes not to contribute additional funds to continue the development of the Ablation Technology; both parties agree that the Joint Venture shall lose its Exclusivity to the Ablation Technology except for the following Automotive components: Control Arms, Steering knuckles, Brake Calipers, Hub Carries, Cylinder Heads and Blocks and all control, ownership and profit of the Joint Venture will be split equally between Alotech and CEC, 50/50. Alotech shall have the opportunity to grant licenses to 3<sup>rd</sup> parties.
  - d. Alotech granting to CEC a License for the Ablation Technology for the HAL project
  - e. CEC License- Intellectual Property Rights, Past & Future Developments and Improvements related to Alotech's Ablation Technology Licensed to the Joint Venture by Alotech.
4. Intellectual Property Rights
  - a. Exclusive Rights of Ablation Technology to the Joint Venture
    - i. 5 years to Joint Venture
    - ii. Possibility of Extension for year 6 through 8 with payment to either Joint Venture or Alotech
      1. If Alotech after 5 years receives the total compensation under 6(a)(i) then payments shall be paid to Joint Venture; OR
      2. If Alotech does not receive the total compensation under 6(a)(i) then payments shall be paid to Alotech, until the total compensation under 6(a)(i) is paid to Alotech; then all remaining payments or amounts shall be paid to Joint Venture
    - iii. Payments for years: Year 6 - \$500,000, Year 7 - \$600,000, Year 8 - \$700,000
    - iv. If payments are not made to Joint Venture or to Alotech or after year 8, Joint Venture shall forfeit all future Rights (Exclusive and non-exclusive) relating to the Ablation Technology, unless both parties mutual agree to extend said time period
      1. All agreements or licenses originally granted to a third party and all renewals or extensions which relates from an original granted agreement or licenses to a third party, relating to the Ablation Process shall be retained by the Joint Venture
  - b. John Grassi or John Campbell or CEC leave Joint Venture to develop a new Process or Technology relating to the Ablation Technology


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- i. The non-leaving party(s) shall have the Right of First Refusal to retain a Exclusive License or purchase the new Process or Technology
  - c. Joint Venture shall have Exclusive Rights of CEC's Intellectual Property Rights & Past Developments related to Alotech's Technology for the same period of time as the Joint Venture has Exclusive to the Ablation Technology
- 5. Profit Distribution of Joint Venture (Does not include Wheel Subdivision)
  - a. Profit for initial 5 years split 50/50
  - b. Profit after 5 years
    - i. Less than \$8 Million p.a.
      - 1. Profit is split 50/50
    - ii. \$8 Million or more p.a.
      - 1. CEC shall receive \$4 Million and remaining profit will go to Alotech
- 6. Wheels Subdivision
  - a. Profit from subdivision for initial 5 years
    - i. \$6 Million total to Alotech for Intellectual Property and Past Developments and obligation of past partners
    - ii. \$2 Million total to CEC for initial contribution
    - iii. Remaining profit will be split 50/50
  - b. Profit from subdivision after 5 years
    - i. Less than \$2 Million p.a.
      - 1. Profit is split 50/50
    - ii. \$2 Million or more p.a.
      - 1. Profit is split 70/30 (Alotech receives 70%)
- 7. Management Cost Limitations
  - a. Consists of accounting services (not including yearly tax returns), legal services (not including patent filing & prosecuting procedures), Office Space & Overhead Costs
  - b. Contribution from outside 3<sup>rd</sup> party
    - i. No limit on Joint Venture Administrative cost expenditures
  - c. CEC contribution if needed for Administrative cost expenditures
    - i. Limit to \$200,000.00 per year
- 8. John Grassi additional allowance
  - a. John Grassi shall receive a one time allowance of \$150,000 after taxes for moving expenses and costs for establishing a new residence (house) in Georgia from the Joint Venture Profit
- 9. Initial key employee salaries
  - a. Key individual's salaries shall be reviewed annually by the Chairman of the Board
    - i. First year of the Joint Venture
      - 1. John Grassi - \$180,000 p.a.
      - 2. John Campbell - \$100,000 p.a.
- 10. CEC preferred vendor for all equipment that can be appropriately manufactured by CEC for the Joint Venture's
  - a. CEC must be competitive with bona-fide offers of other suppliers (within  $\pm 10\%$  difference)


Both parties agree that within 90 days from the last execution date below that a formal Joint Venture Agreement will be executed between the parties that will include the above agreed upon issues.

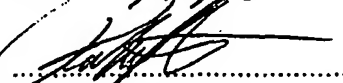
Alotech, Ltd

By:   
 Its: VP Technology  
 Date: 15 August 2003

By:   
 Its: President  
 Date: 15 Aug 2003

Consolidated Engineering Company

By:   
 Its: Chairman of the Board  
 Date: 08/18/03

By:   
 Its: Sr. Vice President  
 Date: 8/18/03

**Hydro Aluminium Deutschland GmbH /  
Consolidated Engineering Company**

**Ablation Casting Automotive Technology Process Production Line**

**Letter of Intent**

**Effective Date: June 30th, 2003**

**Purpose:** This Letter Of Intent ("LOI") sets forth generally the outline of the proposed business arrangement by and between Hydro Aluminium Deutschland GmbH (HAL) and Consolidated Engineering Company ("CEC"), designed to explore and test production of certain cast automotive parts through use of an ablation technology. The Parties intend to document this business relationship in the Definitive Agreement within 180 days after the effective date of this LOI.

**I. Intent of Parties**

The parties acknowledge that process of reaching a definitive agreement will require a series of trials, engineering work, cost calculations, discussions and agreements starting with acceptance of this LOI by all parties on or before June 30th, 2003. The next area of discussions will focus on the related business case and on the transaction details which will include defining and agreeing to costs and market prices of products, royalty amounts and compensations.

Definition for capitalized defined terms are included as Attachment A to this Letter of Intent.

**II. Project**

The Parties agree to undertake the Project together under the following distribution of responsibilities:

Both parties agree and acknowledge that CEC has obtain a Product Marketing, Distribution and License Agreement from Alotech Ltd. for the Project (See Attachment C).

CEC shall conduct and manage the Project and any variations thereof and will have the full responsibility for developing and testing the Ablation Process during the term of this Letter of Intent and the corresponding Definitive Agreement. With regard to the appropriate pouring method both parties will co-operate in good faith.

HAL shall supply to CEC detail information relating to the dimension constraints and key characteristic of each casting and all parties shall assist in the design and the development of the mould and of the necessary gate and riser system for each casting group. During the term of this Letter of Intent and the Definitive Agreement, HAL shall make accessible to CEC all HAL Background Know-How and HAL Background Patents relevant and useful for the developing and testing for the Project. During the terms of this LOI, HAL will produce the necessary number of moulds of the components, using an appropriate inorganic binder system in proper steel tools, on their

  
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state of the art production equipment and supply them to CEC in order to be processed through the pouring-, ablation- and further necessary process steps. HAL will execute the related material examination and disclose the results to CEC. HAL will also present these components to potential customers for examination. CEC will allow HAL to disclose details of the process to this potential customer based on an appropriate disclosure agreement which will be approved by CEC, between HAL and the customer which provides for appropriate terms of confidentiality.

HAL shall be entitled to create, have registered and/or use an own brand or trademark for the products produced in the ablation process. The use of such trademarks may be subject to the condition of appropriate reference to the origin of the products and/or the process.

All parties shall have access to all equipment and testing data generated during the development and operation of the Process Line. All parties shall constantly update each other and deliver respective reports and conclusions upon respective milestones.

### III. Equipment Purchase

CEC agrees to sell and HAL agrees to purchase for the Purchase Price described in the Definitive Agreement the CEC Ablation Apparatus and its Ancillary Equipment. HAL shall use the CEC Ablation Apparatus and its Ancillary Equipment to develop and operate a Process Line with CEC's assistance as described above, using the Ablation Process to manufacture any or all of the Casting Groups.

### IV. Exclusivity

Upon payment by HAL of the relevant Entry Fee for any Casting Group, CEC shall covenant not to grant to any other Party a right to use an CEC Ablation Apparatus for testing, production and/or manufacturing of Castings of the Casting Group identified by the Definitive Agreement within the Territory for Five (5) years from the Effective date of this Agreement. Nothing in the Letter of Intent shall prevent CEC from using or licensing to others the right to use the CEC Ablation Apparatus and its Ancillary Equipment outside of the Territory. In the event HAL commits a material breach of any of the terms of the Definitive Agreement and shall fail to remedy such a breach within thirty (30) days after written notice, HAL then shall default all exclusivity and/or licensee's rights granted to it under the Definitive Agreement. During the term of this LOI, CEC will reserve exclusivity in the territory for the four casting groups, mentioned in Attachment B to HAL.

### V. Agreed Equipment Terms

HAL agrees that HAL will not transfer ownership of the CEC Ablation Apparatus or its Ancillary Equipment without prior written consent of CEC. Both Parties agree that the CEC Ablation Apparatus and its Ancillary Equipment shall be only installed at one of HAL's manufacturing facilities.

The Parties agree that should HAL decide to sell or otherwise transfer or dispose of any or all of the CEC Ablation Apparatus and its Ancillary Equipment, then HAL shall secure a detailed written offer from the prospective purchaser and CEC shall have the right of first refusal to purchase any or all

of the CEC Ablation Apparatus and its Ancillary Equipment under the same terms as described in the written offer. If CEC does not exercise such choice within a period of four (4) weeks after HAL's written notice of the offer by the prospective purchaser, HAL may effectuate the transfer to the prospective purchaser for the terms described in the written offer.

#### VI. Ownership of Equipment and Intellectual Property

**A. Equipment:** HAL shall own the CEC Ablation Apparatus and its Ancillary Equipment, purchased pursuant to section III above, and subject to the contract restrictions stated herein and in the Definitive Agreement. CEC may produce other sets of CEC Ablation Apparatus and its Ancillary Equipment which may be used or licensed separately or together in any way allowed under the Definitive Agreement.

**B. Background:** Both parties shall make all relevant Background Know-How and Patents available to each other for the sole purpose of developing and testing a Process Line. Nothing in this clause shall be construed as giving to any party any rights to use any Background Patents of the disclosing Party for any purpose other than the developing and testing of a Process Line utilizing the CEC Ablation Apparatus. In circumstances where CEC wishes to license certain aspects of the CEC Ablation Apparatus and needs to license certain elements of the HAL Background Know-How and HAL Background Patents, HAL agrees to negotiate with CEC in good faith and allow such license for a reasonable price in accordance with the commercial value of said technology. Each Party hereby confirms and shall confirm in the Definitive Agreement it is the undisputed and legitimate owner and/or legitimate user of its disclosed Background Patents and Know-How and as such being entitled to grant to each Party a right to use said Know-How in connection with the Project.

#### **C. Foreground:**

1. Excluding core manufacturing and core assembling, all future developments and derivative works related to or arising from the Project, the CEC Ablation Apparatus, the Ablation Process or any matter connected with the Definitive Agreement shall be owned by CEC, HAL and its affiliates and representatives agree to facilitate recording of corresponding ownership interests in all such future developments and derivative works. Such foreground Know-How and such Foreground Patents are and shall be the property of CEC to the extent they relate to the Project or to CEC Ablation Apparatus or the Ablation Process or related technology.

2. Excluding core manufacturing and core assembling, HAL shall disclose to CEC all innovations, improvements and know-how relating to the Project. In the event that HAL fails to disclose said information to CEC it shall be considered a material breach of this Letter of Intent and of the Definitive Agreement and HAL will forfeit all exclusivity rights under the Definitive Agreement.

3. If CEC shall at any time during the duration of this Letter of Intent or the Definitive Agreement elect to abandon its interest in any Foreground Know-How or Patent, then CEC shall inform HAL who shall at its option be entitled (but not obligated) to have such Know-How or Patent assigned to its name and shall assume all responsibility for its maintenance and prosecution and all cost associated therewith.

4. HAL and CEC agree not to challenge or assert any allegation against each other's ownership of or relating to the issuing of any and all patents rights, inventorship rights or ownership rights for any worldwide patents and or patents applications for or relating to the Ablation Process or related technology, excluding core manufacturing and core assembling. HAL shall assure that there are no rights of its employees and/or contractors that prevent or interfere with complete unencumbered transfer of all rights to CEC. For statutory rights of employees to compensation by virtue of inventorship in respect of patentable inventions the parties shall as and when such issue occurs in good faith negotiate terms and conditions for resolving this issue.

5. Both parties shall make all relevant Foreground Know-How and Patents available to each other for the sole purpose of developing and testing a Process Line. In circumstances where CEC wishes to license certain aspects of the CEC Ablation Apparatus and needs to license certain elements of the HAL Foreground Know-How and HAL Foreground Patents, HAL agrees to negotiate with CEC in good faith and allow such license for a reasonable price in accordance with the commercial value of said technology

#### VII. Fees

HAL agrees to pay the following fees to CEC. The amounts and terms surrounding such fees shall be negotiated between the parties, written into Attachment B and included in the Definitive Agreement.

**Purchase Price for the CEC Ablation Apparatus and its Ancillary Equipment.**

**Entry Fee for exclusive rights as defined and described in section IV above .**

**Annual License Fee paid to secure the continuing right to use the CEC Background Patents and the CEC Background Know-How.**

**Tolling Fee paid per part actually produced using the CEC Ablation Apparatus and its Ancillary Equipment.**

As for information, the purchase price of the Process Line and the Entry Fee will be capitalized and by this become as depreciations (according US GAP) a part of the business model. The Annual Fee as well as the Tolling Fee will become a part of the direct costs of the component. Based on an achievable market price per component there will a certain Return on Sales calculated as a result. As a precondition of the commercial feasibility, HAL has to realize an Internal Rate of Return after Taxes of at least 15% in the business model of the entire project. HAL will disclose the related business model and achievable market price to CEC in order to discuss and define the limits of the different Fees. This negotiations will be lead in good faith with the consequence to acquire a particular component or not.

**Process Development & Engineering Costs for CEC's work on the basic engineering of the Process Line including the core making, core assembling, pouring, ablation process including the water treatment, melting, metal supply, trimming and heat treatment and addition items as reflected in Attachment B.**



**VIII. Spare Parts**

CFC shall be the sole exclusive supplier of all spare parts and/or wearing parts associated with all equipment that CFC supplies related to the Project during the term of this Letter of Intent and the term of the Definitive Agreement. The price of such part is to be paid by HAL, at costs to be agreed to or defined in the Definitive Agreement.

**IX. Post Process Line Production**

The Parties anticipate that upon completion of the Project and successful operation of a first Process Line, the Parties will choose to continue production and to expand manufacturing to include additional Casting Groups. The terms and conditions for this production and related fees will be defined and explained in the Definitive Agreement.

**X. Non-Solicitation**

Each Party agrees that it shall not, directly or indirectly, recruit or hire, or attempt to recruit or hire, any employee or independent contractor of the other Party or its affiliate nor entice any such employee or contractor to leave its present employer until two years after such employee/contractor ceases to be an employee/contractor of said Party or Affiliate.

**XI. 180-Day Term**

The Parties agree to negotiate in good faith toward the execution of a Definitive Agreement within 180 days after the date of this Letter of Intent first set forth above. This date may be extended by mutual written agreement of the Parties.

**XII. Public Announcements**

Prior to the execution of the Definitive Agreements, if any, by the Parties, neither Party shall make a public announcement about, or otherwise disclose the existence of this Letter of Intent or the Parties' discussions in connection with the possible business relationship proposed herein (including any discontinuation of it) without the written consent of the other Party approving the text of such public announcement or disclosure. Either of the Parties may at any time make announcements which are required by applicable law, regulatory bodies or stock exchange or stock association rules, so long as the Party so required to make the announcement, promptly upon learning of such requirement, notifies the other Party of such requirement and discusses with the other Party in good faith the exact wording of any such announcement. The Parties agree that any announcement concerning their business relationship shall be a mutually agreed-upon joint announcement. This "Public Announcement" provision and its nondisclosure obligation will survive the expiration of the 180-day term of this Letter of Intent.

**XIII. Confidentiality**

To the extent that information relating to the Project, the Ablation Process, methods of doing business, or any foreground or background intellectual property is received by any representative of either Party from another Party it is agreed that such information shall be treated as strictly confidential. Each Party agrees to preserve and protect such information from disclosure to any person other than its employees with a need to know. Each Party shall bind employees to the same confidentiality obligation. The Parties agree that any further information disclosed by one of the Parties to another Party shall be used only by the receiving Party for the purpose set forth above. Anyhow, CEC will allow HAL to disclose details of the process to its potential customer, based on an appropriate disclosure agreement similarly based on the non-disclosure agreement executed between HAL, CEC and Alotch in May 2003, between HAL and the customer which provides for appropriate terms of confidentiality. It is agreed that neither Party shall be liable for disclosure of any information if the same:

- is already in the public domain through no act or omission of the part of the receiving Party;
- or was know to the receiving Party at the time of disclosure;
- or is in the possession of the receiving Party or later obtained by the receiving Party without any restrictions on further disclosure from a third Party which was legally entitled to disclose the same;
- or is information which the Parties have agreed to be published.

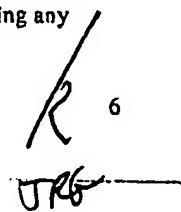
The Parties shall use all reasonable endeavors to enforce the aforementioned obligations and confidentiality on the Party of their respective employees, agents and servants and upon any professionals consultants used by them. The secrecy requirements as forth above shall remain in force for a period of two (2) years after the termination or duration of this Letter of Intent or any Definitive Agreement, which ever is longer. However, the secrecy requirements as set forth above with respect to trade secrets shall continue for so long as the information remains a trade secret. In case of termination of this Letter of Intent other than by the execution of a Definitive Agreement, all confidential information shall be returned to the disclosing Party.

#### XIV. Severance of Terms: Law

Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction and in the event of any provisions being severed there shall be deemed substituted a like provision to accomplish the original intent of the parties to the extent permitted by the applicable law. This Letter of Intent shall be governed by and construed and interpreted under the laws of the United States and the state of New York, and all disputes under it shall be adjudicated there. Either Party may seek interim or injunctive relief under this Letter of Intent.

#### XV. Good Faith Preliminary Actions: Termination of Letter of Intent

Working in good faith toward both a Definitive Agreement and the effectuation of the Project, both parties expect to begin work on their Project responsibilities under the terms of this Letter of Intent, intending to be bound by the Letter of Intent provisions listed below, but otherwise not losing any



rights held before execution of this Letter of Intent. In particular, both parties understand that neither Party may expect or rely on any exclusivities until such rights are specifically granted and paid for pursuant to the Definitive Agreement. During the term of this Letter of Intent, both Parties will provide facility access to representatives of the other Party as required for beginning to work in good faith toward completing the Project. Termination or expiration of this Letter of Intent shall be without prejudice to any rights of either Party against the other which may have accrued up to the date of such termination or expiration.

#### XVI. Non-Binding

The Parties acknowledge that due diligence and negotiation is incomplete on certain matters. Although sufficient discussion of the technical and marketing activities outlined herein has occurred to allow the Parties to commence preparation of a Definitive Agreement, due diligence and negotiation will continue during the 180-day term of this Letter of Intent and may lead either Party to withdraw from the proposed business relationship. Except for the provisions under the headings "Ownership", "Confidentiality", "Public Announcements" and "180-Day Term," by which the parties are hereby expressly bound, this document sets forth only the present intent of the parties, and no obligation of any type or nature whatsoever shall arise hereunder, nor shall the proposed business relationship be deemed to exist, unless and until a definitive written agreement is negotiated and executed by duly authorized representatives of the Parties. Each Party will bear its own expenses arising from or relating to the subject matter of this Letter of Intent until execution of the Definitive Agreement.

#### Execution

Hydro Aluminum

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Consolidated Engineering Company

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Hotech LLC

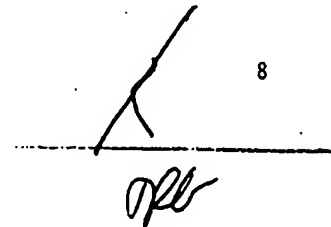
John R. Grami

President & CEO

6/18/2003

**ATTACHMENT A****DEFINITIONS****For the Letter of Intent Executed by and between HAL and CEC**

"Ablation"	A trademark of Alotech, Ltd, used here to refer to the particular apparatus and process provided by CEC to effectuate the production of Castings.
"Ablation Process"	use of the CEC Ablation Apparatus and/or Ancillary Equipment to make Castings.
"Affiliate"	any enterprise or other entity which directly or indirectly controls, or is controlled by any other enterprise or legal entity; the term "control" means ownership of fifty percent (50%) or more of the registered capital and/or voting stock (shares) of a company.
"CEC Background Know-How"	means all technical information, skills, techniques and experiences in the possession of CEC at the Effective Date relating to the Ablation Process including but not limited to aggregate and binder compositions for the manufacturing of Castings or Product
"CEC Background Patents"	means those patents and patents applications, including but not limited to those related to the Ablation Process or related technology, owned or assigned to CEC at the Effective Date that are relevant to the Project.
"CEC Ablation Apparatus"	means a specific equipment utilizing some or all of the technology embodied in the CEC Background Patents and CEC Background Know-How for the purpose of making Castings. A detailed specification of the specific CEC Ablation Apparatus will accompany and be part of the Definitive Agreement.
"Ancillary Equipment"	means specific additional equipment for the manufacturing or heat treatment of the castings or product including but not limited to heat treatment oven or equipment related to the correct operation of the Ablation Process (Pouring Unit, Water Treatment and Ablation Equipment). A detailed specification of the specific Ancillary Equipment will accompany and be part of the Definitive Agreement.

  
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**"Castings"**

shall mean only the casting of the following Automotive component groups: Hub Carriers, Steering Knuckles, Control Arm & Brake Calipers.  
*[Needs to be specified by HAL, quantity and derivation of Groups in the Definitive Agreement]*

**"Casting Group"**

shall mean any one of the four Automotive component groups comprising Castings (Hub Carriers, Steering Knuckles, Control Arm, and Brake Calipers).  
*[Needs to be specified by HAL, quantity and derivation of Groups in the Definitive Agreement]*

**"Definitive Agreement"**

The contract signed between the Parties to effectuate and supplement the terms described in the Letter of Intent. Unlike the Letter of Intent, the Definitive Agreement will be fully enforceable in all of its terms, rights and obligations.

**"Entry Fee"**

means the money paid by HAL to CEC to reserve certain production exclusivity rights over one or more Casting Groups. Entry Fees shall be negotiated and determined in the Definitive Agreement.

**"Effective Date"**

means the date listed above and is the date this Letter of Intent Agreement comes into force.

**"Foreground Know-How"**

means the results, technical information, knowledge, experience, and data developed by any Party arising directly from the Project.

**"Foreground Patents"**

means those patents applications and patents, and substitutions, extensions, reissues, renewals, divisions, continuations or continuations-in-part thereof, the subject matter of which forms part of the Foreground Know-How, whether filed in either the name of HAL or the name of CEC, or the name of any other Party.

**"HAL Background Know-How"**

means all technical information, skills, techniques and experiences in the possession of HAL at the Effective Date and relevant to the Project.

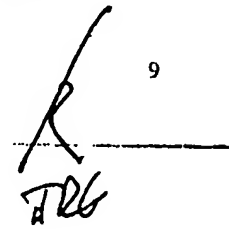
**"HAL Background Patents"**

means those patents and patents applications owned by HAL at the Effective Date and relevant to the Project.

**"Installation Site"**

the site identified in paragraph 6 where the CEC Ablation Apparatus will be initially installed and operated.



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**"Process Line"**

means the initial production line, including facility and equipment, designed to test the cost, efficiency, effectiveness and productivity of manufacturing any of the Casting Groups by using the CEC Ablation Apparatus and its Ancillary Equipment.

**"Process Development Cost"**

means the development to prove the Ablation Process and mechanical properties of sample components utilizing A356

**"Product"**


means any other component or part not included in the definition of Casting as defined above

**"Project"**

means the development and engineering program between the parties to evaluate the technical and commercial feasibility of the 1" commercial Process lines for the production of Castings utilizing the CEC Ablation Apparatus or similar technology.

**"Territory"**

means the countries of the European Union and the countries that are signatories to NAFTA for the production of Castings.



## ATTACHMENT B FEE DETAIL STATEMENT

### 1. Exclusive Entry Fee & License Fees for Each Automotive Casting Group in EUROPE

<u>Casting Group</u>	<u>Exclusive Entry Fee</u>	<u>Annual Licensee Fee</u>	<u>Tolling Fee (per part)</u>
Control Arm	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Steering Knuckle	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Hub Carriers	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Brake Calipers	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Total	<i>Target 2 million</i> \$ <u>t.b.a.</u> <i>Target</i> <u>t.b.a.</u> <i>to be determined</i> 10% of Value Added		
Payment Terms:	<u>t.b.a.</u>	<u>t.b.a.</u>	<u>t.b.a.</u>

### 2. Exclusive Entry Fee & License Fees for Each Automotive Casting Group in NAFTA

<u>Casting Group</u>	<u>Exclusive Entry Fee</u>	<u>Annual Licensee Fee</u>	<u>Tolling Fee (per part)</u>
Control Arm	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Steering Knuckle	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Hub Carriers	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Brake Calipers	\$ t.b.a.	\$ t.b.a.	\$ t.b.a.
Total	<i>Target 2 million</i> \$ <u>t.b.a.</u> <i>To be determined</i> 10% of Value Added		
Payment Terms:	<u>t.b.a.</u>	<u>t.b.a.</u>	<u>t.b.a.</u>

### 2. Process Development & Engineering Costs

Cost \$ 150,000.00 - Including the following:

- (steel tools and moulds will be provided by HAL)
- Core Production and Core Assembling
- Pouring and Ablation Process
- Metal Supply and Melting

- Trimming
- Heat Treatment
- Environmental Equipment
- Water Treatment
- Consumables and Utilities
- Manning
- excluding - Business Plan for the 1<sup>st</sup> product  
(executed by HAI, and disclosed to CEC)

Payment Terms:

Lb.a.

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**ATTACHMENT C**  
**CEC/Alotech Product Marketing, Distribution and License Agreement**

### Outline for Joint Venture (Alotech/CEC)


1. Ownership of Joint Venture
  - a. Alotech - 51%
  - b. CEC - 49%
  - c. Either party shall have the Right of First Refusal to buy or acquire any Ownership Rights from the other party.
2. Control of Joint Venture
  - a. Alotech controls the Joint Venture
  - b. Chairman of the Board will be alternating between Alotech and CEC annually
    - i. Proposed Chairman of Board
      1. Alotech - Ed Crawford
      2. CEC - Franz Ruegg
  - c. Exceptions when 50/50 agreement is needed; in the event of a tie the Chairman of the Board shall act like a "Tie Breaker"
    - i. Decided on profit distribution to parties
    - ii. Selling Joint Venture
    - iii. Additional Licenses to either Alotech or CEC
  - d. John Grassi & John Campbell leave, retire or no longer actively manages Joint Venture
    - i. Then CEC controls the Management of the Joint Venture
  - e. If Joint Venture is Sold
    - i. 50/50 agreement need for selling of Joint Venture
    - ii. The final Selling Price shall be apportion to the parties based on their percentage of ownership
      1. At the time of the sale the majority share owner shall receive a "premium" (market will determine actual amount at time of transfer) for the transfer of the majority shares to a 3<sup>rd</sup> party buyer
3. Contribution
  - a. Alotech License - Intellectual Property Rights, Past & Future Developments and Improvements related to the Ablation Technology including pouring and melting station technology
  - b. CEC - \$2 Million (Contribution after March 2003)
  - c. In the event that CEC's contribution (\$2 Million) is exhausted and additional 3<sup>rd</sup> party contribution is not sufficient and CEC wishes not to contribute additional funds to continue the development of the Ablation Technology; both parties agree that the Joint Venture shall loose it's Exclusivity to the Ablation Technology except for the following Automotive components: Control Arms, Steering knuckles, Brake Calipers, Hub Carries, Cylinder Heads and Blocks and all control, ownership and profit of the Joint Venture will be split equally between Alotech and CEC, 50/50. Alotech shall have the opportunity to grant licenses to 3<sup>rd</sup> parties.
  - d. Alotech granting to CEC a License for the Ablation Technology for the HAL project
  - e. CEC License- Intellectual Property Rights, Past & Future Developments and Improvements related to Alotech's Ablation Technology Licensed to the Joint Venture by Alotech.
4. Intellectual Property Rights
  - a. Exclusive Rights of Ablation Technology to the Joint Venture
    - i. 5 years to Joint Venture
    - ii. Possibility of Extension for year 6 through 8 with payment to either Joint Venture or Alotech
      1. If Alotech after 5 years receives the total compensation under 6(a)(i) then payments shall be paid to Joint Venture; OR
      2. If Alotech does not receive the total compensation under 6(a)(i) then payments shall be paid to Alotech, until the total compensation under 6(a)(i) is paid to Alotech; then all remaining payments or amounts shall be paid to Joint Venture
    - iii. Payments for years: Year 6 - \$500,000, Year 7 - \$600,000, Year 8 - \$700,000
    - iv. If payments are not made to Joint Venture or to Alotech or after year 8, Joint Venture shall forfeit all future Rights (Exclusive and non-exclusive) relating to the Ablation Technology, unless both parties mutual agree to extend said time period
      1. All agreements or licenses originally granted to a third party and all renewals or extensions which relates from an original granted agreement or licenses to a third party, relating to the Ablation Process shall be retained by the Joint Venture
  - b. John Grassi or John Campbell or CEC leave Joint Venture to develop a new Process or Technology relating to the Ablation Technology


JLK

- i. The non-leaving party(s) shall have the Right of First Refusal to retain a Exclusive License or purchase the new Process or Technology
  - c. Joint Venture shall have Exclusive Rights of CEC's Intellectual Property Rights & Past Developments related to Alotech's Technology for the same period of time as the Joint Venture has Exclusive to the Ablation Technology
5. Profit Distribution of Joint Venture (Does not include Wheel Subdivision)
  - a. Profit for initial 5 years split 50/50
  - b. Profit after 5 years
    - i. Less than \$8 Million p.a.
      1. Profit is split 50/50
    - ii. \$8 Million or more p.a.
      1. CEC shall receive \$4 Million and remaining profit will go to Alotech
6. Wheels Subdivision
  - a. Profit from subdivision for initial 5 years
    - i. \$6 Million total to Alotech for Intellectual Property and Past Developments and obligation of past partners
    - ii. \$2 Million total to CEC for initial contribution
    - iii. Remaining profit will be split 50/50
  - b. Profit from subdivision after 5 years
    - i. Less than \$2 Million p.a.
      1. Profit is split 50/50
    - ii. \$2 Million or more p.a.
      1. Profit is split 70/30 (Alotech receives 70%)
7. Management Cost Limitations
  - a. Consists of accounting services (not including yearly tax returns), legal services (not including patent filing & prosecuting procedures), Office Space & Overhead Costs
  - b. Contribution from outside 3<sup>rd</sup> party
    - i. No limit on Joint Venture Administrative cost expenditures
  - c. CEC contribution if needed for Administrative cost expenditures
    - i. Limit to \$200,000.00 per year
8. John Grassi additional allowance
  - a. John Grassi shall receive a one time allowance of \$150,000 after taxes for moving expenses and costs for establishing a new residence (house) in Georgia from the Joint Venture Profit
9. Initial key employee salaries
  - a. Key individual's salaries shall be reviewed annually by the Chairman of the Board
    - i. First year of the Joint Venture
      1. John Grassi - \$180,000 p.a.
      2. John Campbell - \$100,000 p.a.
10. CEC preferred vendor for all equipment that can be appropriately manufactured by CEC for the Joint Venture's
  - a. CEC must be competitive with bona-fide offers of other suppliers (within  $\pm 10\%$  difference)

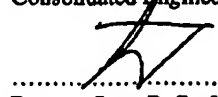
Both parties agree that within 90 days from the last execution date below that a formal Joint Venture Agreement will be executed between the parties that will include the above agreed upon issues.

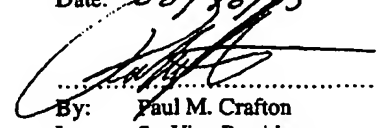
Alotech, Ltd

By:   
 Its: VP Technology  
 Date: 15 August 2003

By:   
 Its: President  
 Date: 15 Aug 2003

Consolidated Engineering Company

By:   
 Its: Chairman of the Board  
 Date: 08/18/03

By:   
 Its: Sr. Vice President  
 Date: 8/18/03

7/5

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING )  
COMPANY, INC., )

Plaintiff/Counter-Defendant, )

v. )

ALOTECH, LTD., JOHN GRASSI, JOHN )  
CAMPBELL, and CAMPBELL )  
TECHNOLOGY, LTD., )

CIVIL ACTION NO. 04-1-01071

Defendants/Counter-Plaintiffs, )

v. )

WOMBLE, CARLYLE, SANDRIDGE & )  
RICE, PLLC, )

Jury Trial Requested

Counter-Defendant. )  
)  
)  
)  
)

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**VERIFIED ANSWER TO VERIFIED COMPLAINT FOR DAMAGES, SPECIFIC  
PERFORMANCE AND INJUNCTIVE RELIEF**

**AND**

**VERIFIED COUNTERCLAIMS AGAINST CONSOLIDATED ENGINEERING  
COMPANY, INC. AND WOMBLE, CARLYLE, SANDRIDGE & RICE, PLLC**

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NOW COME Defendants/Counter-Plaintiffs, Alotech Ltd. ("Alotech"), John Grassi, Dr. John Campbell, and Campbell Technology, Ltd. (collectively, "Defendants"), and in accordance with O.C.G.A. §§ 9-11-12 and 9-11-13, make and file their Verified Answer to Consolidated Engineering Company, Inc.'s ("CEC") Verified Complaint for Damages, Specific Performance and Injunctive Relief ("CEC's Complaint"), and their Counterclaims

against Counter-Defendants CEC and Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"), and in support thereof respectfully show the Court as follows:

**VERIFIED ANSWER TO CEC'S COMPLAINT**

**Nature of Action**

1. Defendants admit that in February 2003 Alotech was in the process of negotiating a formalized joint venture between CEC and Alotech. Defendants deny that Alotech's president and majority shareholder transferred his entire interest in Alotech to CEC and that CEC ever had reason to believe CEC was the majority shareholder of Alotech. On information and belief, Defendants also deny that CEC ever believed CEC was the majority shareholder of Alotech. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 1 of CEC's Complaint and therefore deny the same.

**Parties, Jurisdiction and Venue**

2. Defendants admit the allegations contained in paragraph 2 of CEC's Complaint.

3. Defendants admit the allegations contained in paragraph 3 of CEC's Complaint.

4. Defendants admit the allegations contained in paragraph 4 of CEC's Complaint.

5. Defendants admit the allegations contained in paragraph 5 of CEC's Complaint.

6. Defendants admit the allegations contained in paragraph 6 of CEC's Complaint.



7. Defendants admit the allegations contained in paragraph 7 of CEC's Complaint.

8. Defendants admit the allegations contained in paragraph 8 of CEC's Complaint.

9. Defendants admit the allegations contained in paragraph 9 of CEC's Complaint.

10. Defendants admit the allegations contained in paragraph 10 of CEC's Complaint.

11. Defendants admit the allegations contained in paragraph 11 of CEC's Complaint.

#### **Factual Background**

12. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 of CEC's Complaint and therefore deny the same.

13. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 of CEC's Complaint and therefore deny the same.

#### **Professor John Campbell**

14. Defendants admit that CEC contracted with Dr. Campbell to conduct certain research, the specific scope of which was described in a written contract; that such research was conducted at the University of Birmingham in the United Kingdom where Dr. Campbell is a professor; that CEC paid for this research; and that such research was completed when CEC terminated the relationship with Dr. Campbell in July 2003, approximately one (1) year

early. Defendants deny the remaining allegations contained in paragraph 14 of CEC's Complaint and specifically deny any suggestion that the scope of the research referenced in paragraph 14 of CEC's Complaint related in any way to the Ablation Technology disclosed to CEC by Alotech pursuant to the December 13, 2002 Confidential Disclosure Agreement.

15. Defendants admit that Dr. Campbell became familiar with technology relating to the contractually-defined scope of research referenced in paragraph 14 of CEC's Complaint. Defendants deny the remaining allegations contained in paragraph 15 of CEC's Complaint, including any suggestion that the scope of the research referenced in paragraph 13 of CEC's Complaint related in any way to the Ablation Technology.

16. Defendants deny the allegations in paragraph 16 of CEC's Complaint.

#### **Joint Venture Discussions**

17. Defendants admit that Alotech was formed on December 31, 1998 with Mr. Grassi and Campbell Technology, Ltd. as Alotech's sole members and with Mr. Grassi as Alotech's majority stakeholder and President and Chief Executive Officer; and that Dr. Campbell is the president, majority shareholder and controlling person of Campbell Technology, Ltd. Defendants deny the remaining allegations contained in paragraph 17 of CEC's Complaint.

18. Defendants admit the allegations contained in paragraph 18 of CEC's Complaint, and further state that, in addition to the "high level business information" referenced in paragraph 18 of CEC's Complaint, Alotech and CEC entered into the Confidential Disclosure Agreement on December 13, 2002 to permit Alotech to disclose to CEC highly confidential technical details of Alotech's Ablation Technology; and that once Alotech demonstrated Alotech's Ablation Technology to CEC pursuant to the Confidential

Disclosure Agreement, CEC requested that Alotech relocate its operations from Ohio to CEC's facility in Kennesaw, Georgia as part of a business venture to commercialize Alotech's Ablation Technology.

19. Defendants admit the allegations contained in paragraph 19 of CEC's Complaint.

20. Defendants admit that Alotech and CEC entered into a written agreement in February 2003 that established the framework of their business relationship and outlined the future formal terms of a joint venture. Defendants admit that Exhibit B attached to CEC's Complaint purports to be a portion of the written embodiment of that framework, and state that, as is apparent from the signature page of the document, Exhibit B to CEC's Complaint was executed on February 21, 2003 (not February 20, 2003). Defendants deny the remaining allegations contained in paragraph 20 of CEC's Complaint.

21. Defendants deny the allegations contained in paragraph 21 of CEC's Complaint.

22. Defendants admit that Alotech reluctantly relocated its base of operations from Ohio to CEC's facility in Kennesaw, Georgia at CEC's behest, and that Alotech did so to team up with CEC to commercialize Alotech's Ablation Technology and to capitalize on the market potential for the technology. Defendants deny the remaining allegations contained in paragraph 22 of CEC's Complaint.

#### **The Hydro Aluminum Deal**

23. Defendants admit that Alotech and CEC entered into an agreement regarding the marketing, distribution and licensing of the rights to Alotech's Ablation Technology to Hydro Aluminum Deutschland GmbH ("Hydro Aluminum"). Defendants also admit that the

document attached as Exhibit D to CEC's Complaint purports to be a written embodiment of that agreement. Defendants deny any remaining allegations contained in paragraph 23 of CEC's Complaint.

24. Defendants admit that Alotech, Hydro Aluminum and CEC entered into a Letter of Intent in or around June 2003 for the purpose of testing the application of the Ablation Technology for certain of Hydro Aluminum's cast automotive parts and that Hydro Aluminum paid \$90,000 for the testing. Defendants also admit that the document attached as Exhibit E to CEC's Complaint purports to be a written embodiment of the Letter of Intent. Defendants deny the remaining allegations contained in paragraph 24 of CEC's Complaint.

25. Defendants admit that CEC and Alotech tested the application of the Ablation Technology for certain of Hydro Aluminum's cast automotive parts at CEC's facilities and that Hydro Aluminum executives traveled from Germany to Kennesaw, Georgia to review CEC's and Alotech's progress. Defendants deny the remaining allegations contained in paragraph 25 of CEC's Complaint.

26. Defendants admit that the negotiations of a formal joint venture between Alotech and CEC continued through and beyond August 2003 and that Alotech and CEC agreed to an outline for a formal joint venture on August 18, 2003. Defendants also admit that the document attached as Exhibit F to CEC's Complaint purports to be a portion of the written embodiment of the outline. Defendants deny the remaining allegations contained in paragraph 26 of CEC's Complaint.

**"Campbell and Campbell Technologies Attempt to Squeeze CEC Out of Alotech"**

27. Defendants admit that no transfer of ownership could be made without the consent of Dr. Campbell and Campbell Technology, Ltd. Defendants deny the remaining

allegations contained in paragraph 27 of CEC's Complaint. Defendants further state that CEC understood at all times that no outright transfer of ownership was intended on February 21, 2003 by Grassi, Alotech or CEC; that CEC – specifically including its General Counsel – had a copy of Alotech's Operating Agreement that Grassi gave to CEC on February 21, 2003, setting forth the restrictions on transfers of ownership; that the parties discussed the alleged transfer of ownership on numerous occasions including several meetings in May 2003; that this issue was specifically negotiated and resolved by the parties in May 2003; and that the assertion in paragraph 27 of CEC's Complaint that October 29, 2003 was the "first time" that CEC became aware of the restrictions on the transfer of ownership could not have been made in good faith.

28. Defendants admit the allegations contained in paragraph 28 of CEC's Complaint.

29. Defendants admit the allegations contained in paragraph 29 of CEC's Complaint.

**"Intellectual Property Funded by CEC"**

30. Defendants admit that on July 9, 2003, Alotech filed a utility patent application with the United States Patent Office entitled "Mold-Removal Casting Method and Apparatus." Defendants admit that Alotech's patent application embodies a portion of the Ablation Technology. Defendants deny the remaining allegations contained in paragraph 30 of CEC's Complaint.

31. Defendants admit that Alotech has filed other patent applications embodying portions of the Ablation Technology. Defendants deny the remaining allegations contained in paragraph 31 of CEC's Complaint.

**"Alotech Threatens to Sell Its Technology to Alcoa"**

32. Alotech admits that John Grassi discussed with CEC the possibility of a license of Alotech's Ablation Technology to Alcoa in December 2003. Alotech denies the remaining allegations contained in paragraph 32 of CEC's Complaint.

**Count I – Fraud  
(Against All Defendants)**

33. Defendants incorporate by reference its responses to each of the paragraphs 1 through 32 of CEC's Complaint as if fully set forth verbatim herein.

34. Defendants deny the allegations contained in paragraph 34 of CEC's Complaint.

35. Defendants deny the allegations contained in paragraph 35 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 35 of CEC's Complaint could not have been made in good faith.

36. Defendants deny the allegations contained in paragraph 36 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 36 of CEC's Complaint could not have been made in good faith.

37. Defendants deny the allegations contained in paragraph 37 of CEC's Complaint.

38. Defendants deny the allegations contained in paragraph 38 of CEC's Complaint.

**Count II – Constructive Fraud  
(Against All Defendants)**

39. Defendants incorporate by reference their responses to each of the paragraphs 1 through 38 of CEC's Complaint as if fully set forth verbatim herein.

40. Defendants deny the allegations contained in paragraph 40 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 40 of CEC's Complaint could not have been made in good faith.

41. Defendants deny the allegations contained in paragraph 41 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 41 of CEC's Complaint could not have been made in good faith.

42. Defendants deny the allegations contained in paragraph 42 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 42 of CEC's Complaint could not have been made in good faith.

43. Defendants deny the allegations contained in paragraph 43 of CEC's Complaint.

**Count III – Breach of Contract  
(Against Grassi)**

44. Defendants incorporate by reference their responses to each of the paragraphs 1 through 43 of CEC's Complaint as if fully set forth verbatim herein.

45. Defendants deny the allegations contained in paragraph 45 of CEC's Complaint, and further state that the factual assertions set forth in paragraph 45 of CEC's Complaint could not have been made in good faith.

46. Defendants deny the allegations contained in paragraph 46 of CEC's Complaint.

47. Defendants deny the allegations contained in paragraph 47 of CEC's Complaint.

48. Defendants deny the allegations contained in paragraph 48 of CEC's Complaint.

**Count IV – Specific Performance**  
**(Against All Defendants)**

49. Defendants incorporate by reference their responses to each of the paragraphs 1 through 48 of CEC's Complaint as if fully set forth verbatim herein.

50. Defendants deny that Alotech constitutes a "unique property" right but admit that Alotech's Ablation Technology is of substantial value. Defendants deny the remaining allegations contained in paragraph 50 of CEC's Complaint.

51. Defendants admit that they made in-person visits to CEC and deny the remaining allegations contained in paragraph 51 of CEC's Complaint.

52. Defendants deny the allegations contained in paragraph 52 of CEC's Complaint.

53. Defendants deny the allegations contained in paragraph 53 of CEC's Complaint, and further state that in light of the facts known to CEC, the request for relief set forth in paragraph 53 of CEC's Complaint could not have been made in good faith.

**Count V – Restitution**  
**(Against All Defendants)**

54. Defendants incorporate by reference their responses to each of the paragraphs 1 through 53 of CEC's Complaint as if fully set forth verbatim herein.

55. Defendants deny the allegations contained in paragraph 55 of CEC's Complaint.



**Count V [sic] – Injunctive Relief  
(Against All Defendants)**

56. Defendants incorporate by reference their responses to each of the paragraphs 1 through 55 of CEC's Complaint as if fully set forth verbatim herein.

57. Defendants deny the allegations contained in paragraph 57 of CEC's Complaint.

58. Defendants admit that Alotech's "key assets, namely the patent applications dealing with the Ablation Technology" are of substantial value but deny that CEC has any rights to these assets and deny the remaining allegations contained in paragraph 58 of CEC's Complaint.

59. Defendants deny the allegations contained in paragraph 59 of CEC's Complaint.

60. Defendants deny the allegations contained in paragraph 60 of CEC's Complaint.

61. The allegations of paragraph 61 of CEC's Complaint are of a legal nature for which no response is required.

Defendants deny each and every allegation contained in CEC's Complaint not specifically admitted or otherwise responded to herein. Defendants deny that they are liable to CEC for any reason or in any amount, that CEC is entitled to any relief whatsoever against Defendants, and that CEC's Complaint was filed for a proper purpose.

**FIRST AFFIRMATIVE DEFENSE**

CEC's Complaint fails to state a claim upon which relief against Defendants can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

CEC's claims against Defendants are barred, in whole or in part, by virtue of estoppel, waiver, acquiescence and/or unclean hands.

## **THIRD AFFIRMATIVE DEFENSE**

CEC's claims are barred, in whole or in part, because any alleged injuries and damages were the direct result of CEC's own voluntary conduct.

## **FOURTH AFFIRMATIVE DEFENSE**

CEC's claims are barred, in whole or in part, due to fraud by CEC.

## **FIFTH AFFIRMATIVE DEFENSE**

Defendants are entitled to a set-off of all damages, if any, owed by Defendants to CEC.

## **SIXTH AFFIRMATIVE DEFENSE**

CEC's claims are barred, in whole or in part, because they are subject to an accord and satisfaction between the parties.

## **SEVENTH AFFIRMATIVE DEFENSE**

CEC's claims are barred, in whole or in part, due to duress caused by CEC's wrongful conduct.

## **EIGHTH AFFIRMATIVE DEFENSE**

CEC's claims are barred, in whole or in part, because of failure of consideration.

**VERIFIED COUNTERCLAIMS AGAINST COUNTER-DEFENDANTS  
CONSOLIDATED ENGINEERING COMPANY AND  
WOMBLE, CARLYLE, SANDRIDGE & RICE, PLLC**

**Nature of Action**

1. This is an action by Counter-Plaintiffs Alotech Ltd. ("Alotech"), John Grassi, Dr. John Campbell, and Campbell Technology, Ltd. (collectively, "Counter-Plaintiffs") against Counter-Defendants Consolidated Engineering Company ("CEC") and Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"). This action arises out of CEC's and WCSR's systematic and tortious breaches of their confidentiality and ethical obligations to Counter-Plaintiffs. These breaches occurred as part of a larger scheme, among other things, to defraud Counter-Plaintiffs, to tortiously interfere with Alotech's prospective business relations, and to misappropriate Alotech's intellectual property related to Alotech's Ablation Technology, which is a revolutionary technology for casting high volume, heavy duty aluminum products, such as automotive wheels, engine blocks, and suspension parts.

2. CEC repeatedly and intentionally deceived Alotech regarding the various steps CEC was taking to misappropriate Alotech's Ablation Technology. As part of this unlawful scheme, and apparently at CEC's request, WCSR took confidential information disclosed by Alotech – a new client – and knowingly and admittedly used it to file patent applications on behalf of CEC, its long-standing client, in express violation of WCSR's engagement letter with Alotech and the ethical and professional standards governing lawyer conduct. As set forth in detail herein, CEC and WCSR then set upon a course of conduct to cover up and then clear these unlawful actions so that WCSR's long-standing client, CEC, could capitalize on Alotech's technology. This course of conduct included the filing of a meritless, tactical

lawsuit by CEC against Alotech designed to coerce Alotech into a quick relinquishment of all of Alotech's rights against both CEC and WCSR. Counter-Plaintiffs seek damages, disgorgement of profits, attorneys' fees, and punitive damages in this lawsuit.

**Parties, Jurisdiction and Venue**

3. Alotech is an Ohio limited liability company with a principal place of business located in Cobb County, Georgia. Alotech is in the business of developing innovative processes to cast and/or forge aluminum alloys into high-volume, heavy duty products used every day, such as automotive wheels, engine blocks, and suspension parts.

4. John Grassi is a Georgia resident. Mr. Grassi is the President of Alotech and an Alotech shareholder.

5. John Campbell is a resident of West Malvern in the United Kingdom. Dr. Campbell is the Vice President of Alotech and an Alotech shareholder.

6. Campbell Technology, Ltd. is a United Kingdom company of Dr. Campbell, the sole proprietor.

7. CEC is a Georgia company with its worldwide and U.S. headquarters located in Kennesaw, Georgia and can be served at 1971 McCollum Parkway NW, Kennesaw, Georgia 30144. CEC is in the business of manufacturing furnaces used in connection with the casting and forging of aluminum. CEC sells its furnaces, for example, to auto manufacturers for approximately \$15-\$18 million each.

8. This Court has personal jurisdiction over CEC because it is a resident of Georgia.

9. WCSR is a foreign professional limited liability company that is registered to transact business in Georgia, and can be served at 1201 West Peachtree Street NW, Suite

3500, Atlanta, Georgia 30309. WCSR is one of the hundred largest law firms in the United States and has offices in nine cities, including Atlanta, Georgia.

10. This Court has personal jurisdiction over WCSR because it is registered to transact business in Georgia.

11. Counter-Defendant WCSR is not presently a party to this action, but it is subject to the jurisdiction of this Court and can be served with process, and its presence is required for the granting of complete relief in the determination of Counter-Plaintiffs' counterclaims. Accordingly, Counter-Defendant WCSR should be added as a party to this action.

12. Venue is proper in this Court for Counter-Defendants pursuant to Ga. Const. art. 6, § 2, ¶ 4, and O.C.G.A. §§ 14-2-510, 9-10-31 and 9-10-93.

### **BACKGROUND FACTS**

#### **Alotech's Technology**

13. Counter-Plaintiff John Campbell, one of the principals of Alotech, is one of the most respected physicists in the aluminum casting industry. Dr. Campbell is a professor at the University of Birmingham in England and previously led the team that designed the process through which the "Cosworth engine" is produced, which has resulted in hundreds of millions of dollars in revenue for the Cosworth Company and Ford Motor Company during the last twenty years.

14. Counter-Plaintiff John Grassi, the other principal of Alotech, is also a well-known metallurgical engineer in the aluminum casting industry. Mr. Grassi began his career as an engineer working for Alcoa, and reached the position of Manager of Development, Technologies and Implementation for Alcoa.

15. Counter-Plaintiffs developed a technology known as "Ablation Technology," the rights to which are owned by Alotech.

16. Alotech's Ablation Technology represents a revolutionary advance over pre-existing, conventional aluminum casting technology. Using pre-existing, conventional casting technology – such as the technology upon which Counter-Defendant CEC's business depends – it generally takes several hours to create an aluminum part. Comparatively, it takes only minutes to create the same aluminum part using the Ablation Technology, and the resulting product is stronger than products cast using the pre-existing, conventional casting technology. Alotech's technology has broad-based application that could completely revamp the aluminum casting industry, and, at the same time, eventually render obsolete the technology used by companies like Counter-Defendant CEC.

#### **The Alotech – CEC Business Venture**

17. As part of pursuing a business relationship with CEC, in December 2002 Alotech disclosed the details of the Ablation Technology to CEC pursuant to the terms of a Confidential Disclosure Agreement (the "CDA," attached hereto as Exhibit "A") entered between Alotech and CEC on December 13, 2002.

18. CEC reacted very positively to Alotech's Ablation Technology and enthusiastically and aggressively agreed to pursue a business venture with Alotech in order to commercialize and exploit the Ablation Technology.

19. CEC's reaction was not surprising because CEC's business was built on conventional casting and thermal treatment technology that could be rendered obsolete by Alotech's Ablation Technology. In other words, the furnaces which are at the core of CEC's business would no longer be a necessary component in the casting of high volume,

heavy-duty aluminum parts if Alotech's Ablation Technology were adopted by the aluminum casting industry.

20. Thereafter, Alotech and CEC began working together to commercialize Alotech's Ablation Technology. The parties agreed to the general parameters of a business relationship through which CEC would provide funding for the commercial exploitation of Alotech's Ablation Technology and CEC would receive revenues on a per-product basis in return for its investment in the business relationship.

21. At CEC's urging, Alotech relocated its operations and shipped two 18-wheeler loads of equipment from Cleveland, Ohio to Atlanta, Georgia in January 2003.

22. Thereafter, in February 2003, the parties began negotiating a formalized joint venture.

#### The WCSR Engagement

23. Alotech had always used Fay, Sharpe, Fagan, Minnich & McKee, LLP, a law firm in Cleveland, Ohio, for its intellectual property work.

24. CEC informed Alotech in or around late March or early April 2003 that unless Alotech permitted the law firm WCSR – CEC's long-standing counsel – to represent CEC in negotiations with Alotech for purposes of culminating a formalized joint venture *and* permitted WCSR to represent *both* CEC *and* Alotech regarding the intellectual property contributed by Alotech to the venture, ~~CEC would stop providing funding to the venture,~~ notwithstanding CEC's previous agreement to fund the venture and Counter-Plaintiffs' reliance on those agreements in relocating its operations to Kennesaw, Georgia.

25. Specifically, Scott Crafton, currently CEC's Chief Executive Officer, represented that CEC was investing money into the development of the Ablation

Technology, and that he would not feel comfortable unless Louis Isaf of WCSR took control of protecting the intellectual property related to the Ablation Technology. Mr. Crafton indicated that CEC had always used WCSR for its legal representation and stated that CEC does not do anything without Mr. Isaf's involvement.

26. Alotech reluctantly agreed to CEC's demand, noting the prospect that WCSR could be disqualified from representing CEC in the future if a conflict arose between CEC and Alotech.

27. On April 16, 2003, Alotech and CEC executed an engagement letter with WCSR. (See April 16 letter from WCSR to Alotech and CEC, attached hereto as Exhibit "B," and referred to hereinafter as the "Engagement Letter"). Consistent with the Georgia Rules of Professional Conduct that govern WCSR's conduct, WCSR, CEC, and Alotech agreed that in the event a conflict ever arose between Alotech and CEC regarding either the Alotech intellectual property (referred to as the "Subject Inventions" in WCSR's Engagement Letter) or the terms of the joint venture being negotiated (referred to as the "Business Venture" in WCSR's Engagement Letter), then WCSR would not represent either Alotech or CEC. Specifically, WCSR's Engagement Letter stated:

To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

(Engagement Letter at 2-3, attached hereto as Exhibit "B").



28. As dictated by the Confidential Disclosure Agreement, all parties – including WCSR, CEC, and Alotech – understood at all points in time that all intellectual property related to the Ablation Technology and all improvements to the Ablation Technology belonged to Alotech alone and would be licensed by Alotech to the joint venture. (See CDA at 2, attached hereto as Exhibit “A”). WCSR even acknowledged the Confidential Disclosure Agreement signed between Alotech and CEC in its Engagement Letter with Alotech. (Id. at 1).

#### **Disclosure of the Ablation Technology to WCSR**

29. With the Engagement Letter and Confidential Disclosure Agreement in place, Alotech agreed to disclose the Ablation Technology to WCSR so that WCSR could assist Alotech with protecting its intellectual property rights, and thereby benefit the joint venture between Alotech and CEC.

30. During the course of WCSR’s brief representation of Alotech, Alotech disclosed the general and fundamental details of the Ablation Technology to WCSR at a meeting on May 1, 2003, which was arranged by CEC’s General Counsel.

31. The morning before this May 1 meeting, CEC’s General Counsel circulated a list to WCSR (as well as Mr. Grassi, Dr. Campbell, and Jay Moldovanyi, Alotech’s intellectual property counsel in Ohio) that identified twenty-eight (28) discrete inventions Alotech owned in connection with Alotech’s Ablation Technology and specifying the particular type of protection (i.e., patent protection or trade secret protection) that Alotech wished to pursue for each of these discrete inventions.

32. The May 1 meeting was at CEC’s office. Two WCSR patent attorneys and three Alotech scientists (including Mr. Grassi and Dr. Campbell) were present. Towards

the end of the meeting, Jay Moldovanyi, Alotech's intellectual property counsel in Ohio, joined this meeting by teleconference.

33. Alotech demonstrated the Ablation Technology at the May 1 meeting and disclosed many confidential and fundamental details of the Ablation Technology to WCSR. WCSR made an audiotape recording of this meeting.

#### The WCSR Withdrawal

34. Within weeks of the May 1 invention disclosure meeting, WCSR informed Alotech – in absolute contradiction of its Engagement Letter – that it was withdrawing from its representation of Alotech but that it would continue to represent CEC in all matters, including in connection with the Alotech intellectual property (the "Subject Inventions") and in connection with the joint venture being negotiated between Alotech and CEC (the "Business Venture"). CEC and WCSR went so far as to present Alotech with a letter in mid-May in which Alotech would have waived any conflicts arising from such continued representation of CEC.

35. When Alotech refused to sign this letter, WCSR sent Alotech a withdrawal letter dated May 27, 2003 and delivered in June 2003 attempting to unilaterally dictate the terms of such a waiver. (See May 27, 2004 Letter from WCSR to CEC and Alotech, attached hereto as Exhibit "C" and hereinafter referred to as the "Withdrawal Letter"). This letter stated that WCSR would continue to represent CEC regarding the Business Venture and would continue to represent CEC regarding the Ablation Technology:

In light of the unrelated, limited nature of our prior representation of Alotech (i.e., with respect only to the Applications), we reserve the right to continue our representation of CEC in all matters, including but not limited to matters relating to any Business Venture that may be formed by

the parties. Without limiting the scope of our representation of CEC, we note that, at the request of CEC and acting on CEC's behalf, we will continue to assist CEC with (i) the analysis of Subject Inventions, (ii) the preparation and review of patent applications for Subject Inventions, and (iii) the prosecution of such applications, but always and only as CEC's representative.

(Id. at 2).

36. WCSR provided no reason for this abrupt withdrawal.

37. Alotech never signed any waiver or otherwise consented to WCSR's continued representation of CEC. At all times, Alotech maintained its objection to the terms of WCSR's withdrawal and to WCSR continuing to represent CEC in connection with any intellectual property work related in any way to Alotech's technology or in connection with the Business Venture.

38. Despite Alotech's repeated and unequivocal objections to the terms that WCSR attempted to foist upon Alotech, WCSR continued with its representation of CEC, apparently believing that Alotech could never do anything about it.

#### **The Prospect of the Hydro Aluminum Deal**

39. Around the same time that WCSR purportedly withdrew from representing Alotech, Alotech and CEC were negotiating a deal between their business venture and Hydro Aluminum Deutschland GmbH ("Hydro Aluminum") regarding a license for Alotech's Ablation Technology.

40. The negotiations resulted in the signing of a Letter of Intent between Hydro Aluminum on the one hand and the Alotech/CEC business venture on the other. Additionally, in order to facilitate the Letter of Intent, Alotech and CEC previously had entered into a Product Marketing Distribution License Agreement ("License Agreement")

for the purposes of licensing Alotech's Ablation Technology to Hydro Aluminum. The License Agreement was entered into on June 12, 2003, and it reflected the general structure of the then-contemplated venture between Alotech and CEC.

41. Alotech and CEC estimated that the Hydro Aluminum deal would generate \$4 million of up-front fees and \$35 million over the course of five years.

**CEC and WCSR Misappropriate Alotech's Ablation Technology**

42. In the weeks following WCSR's May 27 unilateral withdrawal letter, WCSR continued its representation of its long-standing client, CEC, and knowingly, willfully, and wrongfully aided and abetted CEC in its misappropriation of Alotech's proprietary technology.

43. In violation of the Engagement Letter with Alotech, on June 11, 2003, WCSR sent a letter to Alotech's Ohio counsel reiterating that WCSR would continue to be involved in representing CEC in legal and patent matters in connection with "the joint project being engaged in by CEC and Alotech." (See June 11, 2003 Letter from Lou Isaf to Jay Moldovanyi, attached hereto as Exhibit "D" and hereinafter referred to as the "June 11 Letter," at 2).

44. Likewise, CEC continued to provide WCSR with Alotech's confidential information relating to the Ablation Technology, including a draft Alotech patent application by correspondence dated June 30, 2003 (which Alotech did not learn of until over a year later).

45. In late June and early July, Alotech demanded the right to inspect all CEC patent files that could conflict with or otherwise compete with Alotech's technology. In response to Alotech's request, CEC/WCSR provided Alotech with a list of non-relevant

patents, thereby misleading Alotech and its Ohio counsel to believe there was no conflict between the parties. What CEC/WCSR failed to disclose was that it was in the process of filing or had just filed patent applications on Alotech's technology that had been disclosed pursuant to the Confidential Disclosure Agreement and that fell squarely within the definition of the "Subject Inventions" in the Engagement Letter.

#### The July 10, 2003 Patent Application

46. Specifically, on July 10, 2003, CEC and WCSR misappropriated Alotech's Ablation Technology by taking the confidential information WCSR obtained in the May 1 meeting with Alotech and using it to file a patent application on behalf of CEC for what CEC dubbed its "Clean Cast" technology. This patent application discloses part of the substance of the confidential information regarding the Ablation Technology that Alotech had disclosed to WCSR during the May 1 meeting at CEC, and included new claims that appear to have been drafted specifically to cover Ablation Technology. CEC referred to this patent application as its "Clean Cast" patent, but whatever the "Clean Cast" rubric is meant to convey, the application is unambiguously directed at the confidential information that Alotech disclosed to CEC under the terms of the Confidential Disclosure Agreement and to WCSR under the terms of the Engagement Letter. } NOT SPECIFIC

47. Neither CEC nor WCSR made any disclosure at this time to Alotech of the filing of the July 10, 2003 patent application. Likewise, the July 10, 2003 patent application was not included on the list of patents that CEC/WCSR provided to Alotech in response to Alotech's demand to inspect all CEC patent files that could conflict with or otherwise compete with Alotech's technology.

48. Then, in August 2003, negotiations regarding the joint venture further unraveled between CEC and Alotech. On September 3, 2003, during a conversation between John Grassi (Alotech's president) and CEC's president regarding the relationship between Alotech and CEC, CEC's president mentioned CEC's "Clean Cast" patent application for the first time. Mr. Grassi demanded to know what was in this application, but CEC's president refused to provide any details at that time.

#### The September 4, 2003 Patent Application

49. On September 4, 2003, just one day after CEC disclosed the existence of the so-called "Clean Cast" patent application to Mr. Grassi, but refused to provide any information about it, WCSR once again breached the Engagement Letter by filing yet another new patent application at CEC's direction on one of the core aspects of the Ablation Technology.

50. Specifically, on September 4, 2003, WCSR – at CEC's instruction – filed a provisional patent application regarding a key element of the Ablation Technology: the chemical binder that holds the sand mold together and makes the Ablation Technology feasible. This technology was disclosed to WCSR and CEC pursuant to the terms of the CDA and falls within the ambit of the "Subject Inventions" referenced in WCSR's Engagement Letter.

51. There can be no doubt that CEC, with the assistance of WCSR, was attempting to steal Alotech's Ablation Technology. CEC/WCSR named John Grassi (Alotech's president) as the inventor of the technology described therein, but did not disclose to Alotech or John Grassi the existence of the application or the desire to file it. This application was, in fact, drafted and filed without the knowledge of Alotech, without the

permission or consent of Mr. Grassi (the named inventor), without consultation with or review of the application by Mr. Grassi, in express disregard of the obligations set forth in the Engagement Letter between WCSR and Alotech, in disregard of the duty of care owed to a former client to avoid conflicts of interest, and in violation of the ethical obligations that govern lawyer conduct.

52. Compounding the careless disregard of the rights of Alotech and Mr. Grassi and confirming the ill-conceived motives of CEC in having this application drafted and filed without the knowledge of Alotech or Mr. Grassi, Alotech had previously informed CEC and WCSR that Alotech did not intend to file a patent application for the chemical binder, but instead intended to treat and protect the chemical binder as a trade secret. WCSR's and CEC's knowledge of this is expressly confirmed by the schedule of Alotech technology circulated to WCSR by CEC's General Counsel in advance of the May 1 meeting in which the chemical binder aspect of the Ablation Technology is specifically identified as a "trade secret." CEC/WCSR nevertheless drafted and filed the application on precisely this subject matter.

53. This September 4, 2003 provisional patent application was filed by WCSR more than three (3) months after WCSR purportedly withdrew from representing Alotech.

54. Neither CEC nor WCSR disclosed this application to Alotech until over six months later when the undersigned counsel began representing Alotech. Instead, CEC and WCSR repeatedly misled Alotech regarding the patent filings made by WCSR on behalf of CEC.

55. Approximately one week after WCSR filed the September 4 patent application, CEC and WCSR finally gave to Alotech and Mr. Grassi a list of what it

referred to as the "Clean Cast" patent applications. Remarkably, CEC and WCSR still did not disclose the provisional patent application that CEC now alleges was the basis for the July 10, 2003 patent application, and CEC and WCSR did not disclose anything about the September 4 filing. Instead, CEC disclosed select portions of files, with the apparent purpose and effect of concealing the extent of the actions taken by CEC, with the assistance of WCSR, to misappropriate and capitalize on Alotech's Ablation Technology.

#### The Alotech – CEC Business Venture Collapses

56. Over the next several months, Alotech (which had no idea about the filing of the September 4 application) continued to object to WCSR's continued representation of CEC, including the fact that the "Clean Cast" file disclosed to Alotech thus far – which, unbeknownst to Alotech, was not complete – appeared to contain information disclosed by Alotech to WCSR at the May 1 meeting.

57. During this time period, Alotech also learned that WCSR was involved on behalf of CEC with a write-up of the joint venture document still being negotiated between Alotech and CEC. This activity was also in flagrant violation of the Engagement Letter and CEC's representations to Alotech that another law firm would represent CEC in such negotiations. This development led to the further unraveling of business negotiations between Alotech and CEC.

58. During this same time period, CEC did not complete its duties outlined in the Letter of Intent with Hydro Aluminum, and Hydro Aluminum walked away from the deal in October 2003. CEC's failure seemed inexplicable to Alotech at the time.

59. Alotech later learned from Hydro Aluminum that Hydro Aluminum also had proposed a modified deal in which only the chemical binder and mold making process used



in connection with the Ablation Technology would be licensed to Hydro Aluminum. CEC unilaterally rejected this offer without consulting with Alotech or even disclosing the offer to Alotech. Upon learning of CEC's unilateral rejection of this offer, Alotech was at a loss to understand why CEC was opposed to a licensing deal worth millions of dollars to Alotech and CEC.

60. Half a year later, when WCSR finally disclosed the existence of the September 4 patent application it unlawfully filed at CEC's instruction, the pieces finally fit together. The subject matter of the modified deal proposed by Hydro Aluminum was the precise subject matter of the September 4 patent application that CEC and WCSR had filed, but also had not disclosed to Alotech. Apparently, CEC was intent on terminating all deals – even if it required the concealment and unilateral rejection of offers – until CEC completed its plan to misappropriate Alotech's technology, at which point it could cut out Alotech completely.

61. When Hydro Aluminum walked away from its Letter of Intent with Alotech/CEC, and when CEC rejected any modified deal proposed by Hydro Aluminum, the basis for the business venture between CEC and Alotech contemplated in June 2003 was effectively terminated.

62. Shortly after the termination of the Hydro Aluminum deal, CEC's president told Mr. Grassi (Alotech's president) that unless Alotech either agreed to a cross-license of technology or agreed to the terms of the proposed joint venture drafted with WCSR's assistance, CEC would sue Alotech in connection with the failed joint venture between Alotech and CEC. CEC did not suggest any basis for such a lawsuit. Instead, CEC's

message was that Alotech either had to capitulate to CEC's unlawful demands, or CEC would bury Alotech with legal expenses that it thought Alotech could not afford to pay.

63. Wanting to avoid needless litigation and still hoping to salvage the relationship, Alotech began negotiating a cross-license. CEC immediately demanded, however, that a condition of entering into a cross-license (and avoiding a meritless lawsuit) was that Alotech must waive all claims against WCSR – many of which related to wrongdoing that *neither CEC nor WCSR had yet disclosed to Alotech* – so that WCSR could draft the cross-license. On January 23, during a conversation between Mr. Grassi and CEC's General Counsel, CEC's General Counsel stated that a waiver of all claims against WCSR was necessary to enter into any cross-license (which CEC had made clear was the only way to avoid the filing of a baseless lawsuit by CEC) because CEC's co-president would not act without the counsel of WCSR's Louis Isaf.

64. The net effect of such a waiver would be a free pass for WCSR to continue to draft and file patent applications for CEC covering the Ablation Technology. Accordingly, CEC communicated unambiguously that the price for avoiding the frivolous lawsuit threatened by CEC was that Alotech effectively would have to grant permission for WCSR to file applications on Alotech's technology on behalf of CEC – and thus, the plan to usurp Alotech's technology would be complete. Alotech refused to grant any such blanket waiver.

65. When Alotech refused to comply with this demand, and as CEC became increasingly desperate to cover its tracks, CEC retained the law firm of McGuireWoods for assistance. Specifically, on January 29, 2004, Fred Isaf – a partner in the Atlanta office of the law firm McGuireWoods and the brother of WCSR's Louis Isaf – sent a letter to

Alotech stating that McGuireWoods now represented CEC in connection with the Business Venture issues between CEC and Alotech.

66. On or about January 30, 2004, Alotech sent a letter to WCSR (also bearing a date of January 6, 2004) outlining the various breaches of WCSR's ethical obligations that WCSR had committed on behalf of CEC of which Alotech was aware.

67. Approximately two weeks later, McGuireWoods filed the threatened lawsuit on behalf of CEC against Alotech and Alotech's owners in what appears to have been a tactical maneuver to force a financially strapped company (Alotech) to capitulate under the strain of litigation to release its claims against CEC and WCSR and to turn over all rights in the Ablation Technology and related intellectual property.

68. At the time that the lawsuit was filed, Alotech believed that it still was in negotiations with CEC for a cross-license of technology in an effort to resolve the issues between them. The lawsuit was triggered, however, by Alotech's articulation of WCSR's wrongdoing.

69. The goal of the lawsuit became immediately apparent, as CEC made an immediate, unsolicited settlement offer to Dr. Campbell's personal attorney in England. This "settlement offer" would require that Alotech cross-license all of its technology to CEC and that Alotech waive all claims against WCSR, i.e., claims that had nothing to do with any of the allegations set forth in the Complaint filed on behalf of CEC by McGuireWoods and many of which related to wrongdoing that had not yet even been disclosed to Alotech. Alotech rejected this attempt to steamroll Alotech and its owners into foregoing their intellectual property rights.

70. Only when the undersigned counsel later appeared on behalf of Alotech did WCSR and CEC begin to disclose the full extent of the wrongful conduct that has occurred over the course of the last year. On March 11, 2004, the undersigned counsel left a voice message for CEC's counsel at McGuireWoods informing CEC's counsel that the law firm of Duane Morris would be representing Alotech, Mr. Grassi, Dr. Campbell, and Campbell Technology, Ltd. in the lawsuit and asking for an extension of time to answer the Complaint.

71. Later that same day, the loss prevention partner at WCSR's Atlanta office sent what appears to have been a hastily-drafted letter to Mr. Grassi. (See March 11, 2004 Letter from WCSR to Alotech [sic], attached hereto as Exhibit "E"). This letter discloses, for the first time, that on September 4, 2003, WCSR filed the patent application described above at CEC's instruction, naming John Grassi as the inventor. This letter also purported to attach a copy of the referenced application, even though it did not and even though the author of the letter later admitted he had not even undertaken a search to locate a copy of that application at the time he had sent the letter. The letter further asserts that an additional copy of the application would be forwarded to Alotech's counsel in Ohio (which never occurred).

#### **Alotech's Lost Opportunities**

72. Throughout the course of its dealing with CEC and WCSR, Alotech, along with CEC, had been involved in negotiations regarding proposed deals with a number of companies seeking to license and/or exploit the Ablation Technology for use in connection with the manufacturing of high volume, heavy duty aluminum parts. Each of these

potential deals would produce revenues to Alotech of at least tens of millions of dollars over a period of years.

73. Since Fall 2003, Alotech on its own has engaged in detailed negotiations with a number of companies regarding the use of Alotech's Ablation Technology to produce high volume, heavy duty aluminum parts. These companies include Alcoa; HA International, LLC; Park Ohio/General Aluminum; and Hydro Aluminum. Each of these potential deals would produce revenues to Alotech of at least tens of millions of dollars over a period of years.

74. As a result of the course of conduct set forth above, almost all such deals have come to a halt due to the ongoing dispute arising from CEC's and WCSR's misconduct and the cloud of uncertainty created by the attempted misappropriation of Alotech's technology.

75. Indeed, CEC's Complaint acknowledges the one-time potential of a deal between Alcoa and Alotech, and confirms that CEC's intent in filing the lawsuit was to terminate that deal.

76. CEC's specific intent to interfere with Alotech's business relationships was made clear in conversations with John Grassi on January 23, 2004. In one of those conversations, Mr. Grassi discussed WCSR's wrongdoing regarding the "Clean Cast" patent applications with CEC's General Counsel (at that point, Alotech did not yet know of the September 4 patent application actually identifying Mr. Grassi as the inventor or the full scope of CEC's and WCSR's wrongful activity regarding the "Clean Cast" patents). CEC's General Counsel responded that it would be a litigation question as to whether the "Clean Cast" patents were based on CEC's technology or Alotech's technology, and that

the prospect of such a battle would be enough to prevent Alcoa from engaging in any transaction with Alotech.

77. Upon information and belief, CEC intended to interfere with the Alotech/Alcoa negotiations by filing its Complaint against Alotech.

78. Additionally, despite repeated demands by Alotech, CEC has refused to return Alotech's equipment that was moved from Ohio to CEC's facilities in Kennesaw, Georgia in January 2003 (the "Converted Equipment").

79. Alotech's repeated demands that CEC return the Converted Equipment have been made in writing, and CEC has failed to provide an adequate response and has demanded cash payments for the return of equipment belonging to Alotech.

80. Alotech has repeatedly informed CEC that its refusal to return the Converted Equipment is interfering with Alotech's ability to demonstrate the Ablation Technology and, therefore, that CEC is compounding Alotech's loss of business opportunities.

81. Alotech has also informed CEC that several pieces of the equipment are owned by third parties that have demanded the return of the equipment.

82. Nevertheless, CEC still refuses to return the Converted Equipment.

83. As a result of CEC's and WCSR's tortious conduct, and as set forth in detail herein, Alotech seeks monetary and injunctive relief based on a number of causes of action including: fraud; aiding and abetting fraud; tortious interference with business relations and prospective business relations; misappropriation of trade secrets and confidential information; breach of fiduciary duties; breach of the Confidential Disclosure Agreement; breach of the duty of good faith and fair dealing; professional malpractice; breach of the Engagement Letter; and conversion.

**Count I**  
**Fraud (Against CEC)**

84. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 83 of their Counterclaims as if set forth fully herein.

85. CEC fraudulently and intentionally concealed from or misrepresented to Counter-Plaintiffs material facts with the intent of (a) misappropriating Alotech's intellectual property rights in the Ablation Technology, (b) resolving WCSR's liability for its tortious misconduct against Alotech without Alotech being fully informed of the actions that WCSR had taken on behalf of CEC to the detriment of Alotech; (c) permitting this misconduct to continue, thereby effectively stripping Alotech of its intellectual property rights in the Ablation Technology; and (d) withholding critical information from Alotech about the status of certain patent filings that were material to business decisions Alotech needed to make and would have materially impacted Alotech's negotiations with third parties.

86. The material facts fraudulently concealed or misrepresented by CEC, as set forth with more specificity above, include but are not limited to the following:

(a) CEC's desire to use WCSR to misappropriate Alotech's intellectual property rights in the Ablation Technology;

(b) the drafting and filing of the July 10, 2003 patent application which misappropriates certain confidential information of Alotech;

(c) the drafting and filing of the of the September 4, 2003 provisional patent application regarding Alotech's Ablation Technology;

(d) WCSR's continued representation of CEC in the negotiations of certain contracts between and among CEC, Alotech, and third parties;

(e) the facts surrounding CEC's efforts to procure a waiver from Alotech with the intent of absolving itself and WCSR from liability for its past and future actions of assisting CEC with its misappropriation of Alotech's intellectual property; and

(f) CEC's general course of conduct in withholding material information about CEC's actions and intent with respect to Alotech's Ablation Technology while at the same time leading Alotech to believe the parties were in a partnering relationship that would ultimately result in a joint venture.

87. These material facts were intentionally and knowingly concealed or misrepresented by CEC. This was compounded by CEC's selective disclosure of related information, designed to hide and conceal the material facts set forth above.

88. Based on Counter-Plaintiff's relationships with CEC, the communications it had with CEC and its agreements with CEC, Counter-Plaintiffs had a justifiable basis for believing that CEC was disclosing to Counter-Plaintiffs all material facts regarding issues related to the CEC/Alotech business venture and Alotech's intellectual property rights, and Counter-Plaintiffs had no reason to believe that CEC would fraudulently conceal material facts from Counter-Plaintiffs.

89. Counter-Plaintiffs relied on CEC's fraudulent omissions and misrepresentations by, among other things, foregoing other possible joint venture relationships in December 2002/January 2003, disclosing confidential information to CEC and WCSR, continuing to engage in a business relationship with CEC, and relying on CEC in negotiating with third parties for the exploitation of the Ablation Technology.

□ ALOTECH REFUSED TO SIGN AN NDA TO PROTECT CEC'S INFORMATION.



90. As a consequence of the foregoing, Counter-Plaintiffs have been damaged and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count II**  
**Aiding and Abetting Fraud (Against WCSR)**

91. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 90 of their Counterclaims as if set forth fully herein.

92. WCSR aided and abetted its long-time client, CEC, in fraudulently and intentionally concealing from or misrepresenting to Counter-Plaintiffs material facts with the intent of (a) assisting CEC in the misappropriation of Alotech's intellectual property rights in the Ablation Technology, and (b) resolving WCSR's own liability for its tortious misconduct against Alotech and effectively stripping Alotech of its intellectual property rights in the Ablation Technology, all in favor of CEC, WCSR's longstanding client.

93. As set forth with more specificity above, the material facts concealed from or misrepresented to Counter-Plaintiffs by WCSR that aided and abetted CEC's fraud on Counter-Plaintiffs, including actions taken but concealed by WCSR, include but are not limited to the following:

(a) the motive behind the unexplained unilateral withdrawal from the representation of Alotech;

(b) WCSR's filing of the July 10, 2003 patent application on CEC's behalf and at CEC's direction which misappropriates certain confidential information of Alotech;

(c) WCSR's filing (at the direction of CEC) of the September 4, 2003 provisional patent application regarding Alotech's Ablation Technology;

(d) WCSR's continued representation of CEC in the negotiations of certain contracts between and among CEC, Alotech, and third parties; and

(e) the facts surrounding WCSR's and CEC's efforts to procure a waiver from Alotech with the intent of absolving themselves from liability for misappropriating Alotech's intellectual property.

94. These material facts were intentionally and knowingly concealed by WCSR, and WCSR knew or should have known of CEC's intention to defraud Counter-Plaintiffs and of WCSR's role in that plan.

95. Based on Alotech's relationship with WCSR, the communications it had with WCSR and its agreements with WCSR, Alotech had a justifiable basis for believing, and in fact relied on the belief, that WCSR would not take these actions, would disclose any such material facts to Alotech, and would not take any actions inconsistent with its obligations to Alotech arising from the attorney-client relationship.

96. As a consequence of the foregoing, Counter-Plaintiffs have been damaged and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count III**  
**Tortious Interference with Business Relations and Potential Business Relations**  
**(Against CEC)**

97. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 96 of their Counterclaims as if set forth fully herein.

98. CEC has engaged in improper and wrongful conduct with the intent of interfering with Alotech's business relationships and potential business relations with third parties:

99. CEC's improper and wrongful conduct includes but is not limited to: (a) misappropriating and/or attempting to misappropriate Alotech's intellectual property in order to create a cloud of uncertainty as to Alotech's ownership of its intellectual property; (b) filing a frivolous bad faith Complaint against Alotech which includes spurious and unsubstantiated claims for the purpose of securing a waiver of past and future wrongdoing by CEC and WCSR, with the additional intent and effect of disparaging Alotech in the marketplace and discouraging third parties from continuing to do business with Alotech; and (c) refusing to return certain equipment owned by Alotech and by third parties with which Alotech has done business, with the intent of preventing Alotech from demonstrating the Ablation Technology to Alotech's prospective business partners and creating discord between Alotech and the third parties who have provided equipment to Alotech.

100. CEC has acted purposely, maliciously and, without privilege with the intent to injure Alotech.

101. CEC's misconduct has directly caused third parties including but not limited to, Alcoa, HA International, LLC, Park Ohio/General Aluminum and Hydro Aluminum, among others, to discontinue or fail to enter into anticipated and potential business relationships with Alotech.

102. As a direct and proximate result of CEC's unlawful acts, Alotech has suffered and will continue to suffer irreparable damage.

103. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count IV**  
**Misappropriation of Trade Secrets and Confidential Information**  
**(Against CEC)**

104. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 103 of their Counterclaims as if set forth fully herein.

105. Pursuant to the terms of the CDA, Alotech disclosed to CEC certain of its trade secrets and confidential information regarding its Ablation Technology.

106. At the time of the disclosure, CEC was aware that Alotech's trade secrets and confidential information were confidential, were being disclosed pursuant to the terms of the CDA, and that it was prohibited from using or disclosing to third parties Alotech's trade secrets and confidential information without the prior authorization and approval of Alotech.

107. CEC obtained Alotech's trade secrets and confidential information under circumstances giving rise to a duty to maintain their secrecy or limit their use.

108. Subsequently, CEC used Alotech's trade secrets and confidential information to CEC's benefit and Alotech's detriment, and disclosed Alotech's trade secrets and confidential information to third parties including, but not limited to, the U.S. Patent and Trademark Office by filing or causing to be filed certain patent applications containing such trade secrets and confidential information.

109. CEC also used Alotech's trade secrets by attempting to assert ownership over them.

110. At the time CEC used Alotech's trade secrets and disclosed Alotech's trade secrets and confidential information to the U.S. Patent and Trademark Office, among others, it knew or had reason to know that the information being disclosed was Alotech's trade secret and confidential information.

111. CEC did not have Alotech's express or implied consent to use or disclose the trade secret or confidential information to third parties.

112. Alotech derived economic value from its trade secrets and confidential information not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

113. Alotech took reasonable efforts under the circumstances to maintain the secrecy of its trade secrets and confidential information through means, including but not limited to the use of confidential disclosure agreements.

114. As a consequence of the foregoing, Counter-Plaintiffs have been damaged by CEC's misappropriation of Alotech's trade secrets and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

#### **Count V**

#### **Misappropriation of Trade Secrets and Confidential Information (Against WCSR)**

115. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 114 of their Counterclaims as if set forth fully herein.

116. Pursuant to the terms of the Engagement Letter, Alotech disclosed to WCSR certain of its trade secrets and confidential information regarding its Ablation Technology.

117. At the time of the disclosure, WCSR was aware that Alotech's trade secrets and confidential information were confidential, were being disclosed pursuant to the terms of the Engagement Letter, and that WCSR was prohibited from using or disclosing to third parties Alotech's trade secrets and confidential information without the prior authorization and approval of Alotech.

118. WCSR obtained Alotech's trade secrets and confidential information under circumstances giving rise to a duty to maintain their secrecy or limit their use.

119. WCSR used and disclosed certain of Alotech's trade secrets and confidential information regarding the Ablation Technology to the benefit of its long standing client, CEC, by including such information in certain patent applications that it filed with the U.S. Patent and Trademark Office on CEC's behalf.

120. WCSR also disclosed certain of Alotech's trade secrets and confidential information to third parties, including but not limited to the U.S. Patent and Trademark Office, by filing or causing to be filed certain patent applications containing such trade secrets and confidential information.

121. At the time WCSR used Alotech's trade secrets and confidential information and disclosed the same to the U.S. Patent and Trademark Office among others, it knew or had reason to know that the information being disclosed was Alotech's trade secret and confidential information.

122. WCSR did not have Alotech's express or implied consent to use its trade secret or confidential information to Alotech's detriment or to disclose the trade secrets or confidential information to third parties.

123. Alotech derived economic value from its trade secrets and confidential information not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

124. Alotech took reasonable efforts under the circumstances to maintain the secrecy of its trade secrets and confidential information through means, including but not limited to the use of confidential disclosure agreements.

125. As a consequence of the foregoing, Counter-Plaintiffs have been damaged by WCSR's use and disclosure of Alotech's trade secrets and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

#### **Count VI**

#### **Breach of the Confidential Disclosure Agreement (Against CEC)**

126. Alotech incorporates by reference the allegations in paragraphs 1 - 125 of its Counterclaims as if set forth fully herein.

127. CEC entered into the CDA with Alotech with the intent of inducing Alotech to disclose to CEC certain confidential information regarding its Ablation Technology.

128. Alotech disclosed such information to CEC pursuant to the terms of the CDA.

129. The CDA prohibits CEC from disclosing such information to third parties without the consent and approval of Alotech or using such information for purposes other than evaluating its business venture with Alotech.

130. CEC, nevertheless, did disclose certain confidential information of Alotech regarding the Ablation Technology to third parties, including but not limited to the U.S.

Patent and Trademark Office, through the filing of a patent application in July 2003 and a provisional patent application on September 4, 2003.

131. The actions of CEC as described above, and as will additionally be shown at trial, constitute a breach of the CDA between Alotech and CEC. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

132. CEC also used Alotech's confidential information and trade secrets by attempting to assert ownership over them.

133. As a consequence of the foregoing, Alotech is entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count VII**  
**Breach of the Duty of Good Faith and Fair Dealing (Against CEC)**

134. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 133 of their Counterclaims as if set forth fully herein.

135. Under Georgia law, there is implied into every contract a covenant of good faith and fair dealing.

136. CEC had a duty to perform its obligations pursuant to the CDA according to its duty of good faith and fair dealing.

137. CEC breached the CDA as set forth herein.

138. The actions of CEC as described above, and as will additionally be shown at trial, are in breach of its obligation of good faith and fair dealing that it owed to Alotech.

139. CEC's actions have caused, and will continue to cause, damage to Alotech.



140. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count VIII**  
**Breach of Fiduciary Duty (Against WCSR)**

141. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 140 of their Counterclaims as if set forth fully herein.

142. Alotech and WCSR have a fiduciary and confidential relationship arising from their attorney-client relationship.

143. WCSR owes Alotech a fiduciary duty as a result of their relationship.

144. Pursuant to its fiduciary and confidential relationship with WCSR, Alotech disclosed certain confidential information to WCSR.

145. Pursuant to its fiduciary and confidential relationship with Alotech, WCSR had a duty to maintain the confidentiality of the confidential information disclosed by Alotech and to not misuse such information to Alotech's detriment.

146. As described herein, WCSR misused the confidential information disclosed by Alotech to Alotech's detriment and to the benefit of CEC, its long-standing client.

147. As described herein, WCSR also disclosed to third parties the confidential information it received from Alotech without Alotech's permission.

148. The actions of WCSR as described above, and as will additionally be shown at trial, constitute a breach of WCSR's fiduciary duty to Alotech. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

149. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count IX**  
**Professional Malpractice (Against WCSR)**

150. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 149 of their Counterclaims as if set forth fully herein.

151. Pursuant to the terms of the Engagement Letter, Alotech retained WCSR to represent it in certain matters.

152. The actions of WCSR as described above, and as will additionally be shown at trial -- including but not limited to using Alotech's confidential business information and trade secrets for the benefit of CEC, its long-standing client; continuing to represent CEC in violation of the Engagement Letter and conflict of interest principles and to the detriment of Alotech; and continuing to file patent applications regarding Alotech's confidential information at the instruction of CEC after terminating its representation of Alotech -- evidence WCSR's failure to exercise ordinary care, skill and diligence in performing legal services for Alotech during and after the course of its engagement by Alotech.

153. As a direct and proximate result of WCSR's failure to exercise ordinary care, skill and diligence, Alotech has sustained significant damages.

154. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

155. Pursuant to O.C.G.A. § 9-11-9.1, Counter-Plaintiffs have attached hereto as Exhibit "F" the Affidavit of David N. Lefkowitz, Esq. in support of their claim of professional malpractice.

**Count X**  
**Breach of the Engagement Letter (Against WCSR)**

156. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 155 of their Counterclaims as if set forth fully herein.

157. Alotech retained WCSR to represent it in certain intellectual property and business matters pursuant to the terms of the Engagement Letter.

158. WCSR agreed to the terms of the Engagement Letter as evidenced by the signature of its authorized representative affixed thereto.

159. The Engagement Letter explicitly requires that WCSR withdraw from its representation of Alotech and CEC in the case of specific conflicts.

160. A conflict arose between Alotech and CEC which required that WCSR withdraw from its representation of CEC and Alotech with respect to certain matters.

161. WCSR breached the Engagement Letter by refusing to withdraw from its representation of CEC with respect to the Subject Inventions and Business Venture as required by the Engagement Letter.

162. The actions of WCSR as described above, and as will additionally be shown at trial, constitute a breach of the Engagement Letter between WCSR, CEC and Alotech. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

163. As a consequence of the foregoing breach of the Engagement Letter, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count XI**

**Breach of the Duty of Good Faith and Fair Dealing (Against WCSR)**

164. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 163 of their Counterclaims as if set forth fully herein.

165. Under Georgia law, there is implied into every contract a covenant of good faith and fair dealing.

166. WCSR breached the Engagement Letter as set forth herein.

167. WCSR had a duty to perform its obligations pursuant to the Engagement Letter according to its duty of good faith and fair dealing.

168. The actions of WCSR as described above, and as will additionally be shown at trial, are in breach of its obligation of good faith and fair dealing that it owed to Alotech pursuant to the Engagement Letter.

169. WCSR's actions have caused, and will continue to damage Alotech.

170. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count XII**

**Conversion (Against CEC)**

171. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 170 of their Counterclaims as if set forth fully herein.

172. The Converted Equipment is the sole property of either Alotech, or of HA International, LLC, Park Ohio and Hitchcock Industries, Inc., all of whom loaned pieces of the Converted Equipment to Alotech and have authorized Alotech to act on their behalf to recover the Converted Equipment.

173. On several occasions over the last four (4) months, Alotech has demanded that CEC return the Converted Equipment.

174. CEC has refused Alotech's demands and it has intentionally interfered with Alotech's possession and right to possession of the Converted Equipment without cause or permission.

175. As a result of CEC's unauthorized and illegal possession of the Converted Equipment, Alotech has been damaged.

176. Based upon the actions of CEC as described above, and as will additionally be shown at trial, Counter-Plaintiffs are entitled to recover from CEC the actual damages suffered in an amount to be shown at trial.

177. CEC's continued possession and use of the Converted Equipment subjects Counter-Plaintiffs to a pending and ongoing threat of immediate, irreparable harm.

**Count XIII**  
**Punitive Damages (Against CEC and WCSR)**

178. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 177 of their Counterclaims as if set forth fully herein.

179. CEC's and WCSR's actions as described above, and as will additionally be shown at trial, showed willful misconduct, malice, fraud, wantonness, oppression or that

entire want of care which would raise the presumption of conscious indifference to their consequences and for which Counter-Plaintiffs are entitled to recover punitive damages.

**Count XIV**  
**Attorneys' Fees (Against WCSR and CEC)**

180. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 179 of their Counterclaim as if set forth fully herein.

181. CEC and WCSR have acted in bad faith, have been stubbornly litigious, and have caused Counter-Plaintiffs unnecessary trouble and expense, thereby entitling Counter-Plaintiffs to an award of their expenses of litigation, including attorneys' fees.

**Prayer for Relief**

WHEREFORE, having fully answered CEC's Complaint and having asserted their counterclaims against CEC and WCSR, Counter-Plaintiffs pray for a jury trial on all issues so triable and for the following relief:

1) That the Court deny each and every one of CEC's prayers for relief and that it dismiss CEC's claims against Alotech with prejudice;

2) That a preliminary and permanent injunction issue enjoining CEC, WCSR, and all those in active concert with them from:

(a) further using or disclosing in any manner any of Alotech's trade secrets and confidential information;

(b) prosecuting, asserting or otherwise claiming any right in any patent application assigned to CEC which contains Alotech's trade secrets or confidential information, specifically including any patent application filed by WCSR on behalf of CEC after May 27, 2003;

(c) tortiously interfering with Alotech's business relations or potential business relations with third parties; and

(d) retaining possession of the Converted Equipment;

3) That judgment be entered against CEC and WCSR for the damage they have caused to Counter-Plaintiffs in an amount not yet fully determined;

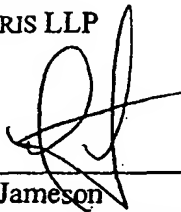
4) That Counter-Plaintiffs be awarded punitive damages in an amount to be determined by the enlightened conscience of the jury;

5) That Counter-Plaintiffs be awarded their costs and attorneys' fees for bringing this action; and

6) For such other relief as the Court deems just and proper.

Respectfully submitted this 9<sup>th</sup> day of July, 2004,

DUANE MORRIS LLP



L. Norwood Jameson

(Georgia Bar No. 003970)

Matthew C. Gaudet

(Georgia Bar No. 287789)

Matthew S. Yungwirth

(Georgia Bar No. 783597)

1180 West Peachtree Street

Suite 700

Atlanta, Georgia 30309-3448

(404) 253-6900

ATTORNEYS FOR

DEFENDANTS/COUNTER-PLAINTIFFS

Alotech, Ltd., John Grassi, John Campbell,  
and Campbell Technology, Ltd.


VERIFICATION

County of Ashtabula)


State of Ohio)

John Grassi personally appeared before me this date and, after being duly sworn, deposed and in his individual capacity and in his capacity as the president of Alotech, Ltd. said that: (a) he is authorized to make this verification on behalf of Alotech Ltd., (b) he has read the foregoing Verified Answer to Verified Complaint for Damages, Specific Performance and Injunctive Relief and Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC, and (c) that his individual responses and the responses of Alotech, Ltd. as well as the allegations in the counterclaim are true and correct to the best of his knowledge, information and belief.

This 8th day of July, 2004

  
John Grassi, individually

Alotech, Ltd.

  
by John Grassi, President

State Of Ohio  
County of Ashtabula

Sworn to and subscribed  
before me this 8th day  
of July, 2004.

  
Notary Public

ANGELA L. MOORE  
NOTARY PUBLIC-STATE OF OHIO  
My Commission Expires on  
April 15, 2005



## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between Alotech Ltd., a company having a principal place of business at Two Commerce Park Square, 23220 Chagrin Blvd., #105, Cleveland, Ohio 44122 ("Discloser") and Consolidated Engineering Company, Inc. a corporation having a principal place of business at 1971 McCollum Parkway, Kennesaw, Georgia 30144-3637 ("Recipient") effective as of the latter date of execution below.

WHEREAS, Discloser and Recipient (hereinafter jointly referred to as the "Parties" or individually as "Party") are contemplating a venture or business arrangement (the "Venture");

WHEREAS, Discloser may find it necessary or desirable from time to time to disclose to Recipient certain technical, manufacturing, marketing, and sales information in written, oral, and/or machine readable form; and

WHEREAS, Discloser considers a significant portion of such material to be valuable, proprietary, secret, and confidential.

NOW THEREFORE, in consideration of the mutual understandings hereinafter set forth, the parties agree that the Confidential Information which will be delivered to certain employees of Recipient will be subject to the following terms and conditions:

(1) All information provided by Discloser to Recipient pertaining to casting techniques employing aggregate molds, methods for manufacturing cast metal parts and related equipment therefor, whether the source of that information is Discloser or a subsidiary, parent, or affiliate of Discloser, will be deemed to be "Confidential Information" when it is properly labeled as such. Any information that may be verbally or visually disclosed by Discloser to Recipient should be briefly summarized in writing, by either party, with a properly labeled copy of such writing promptly provided to the other party thereafter.

(2) Recipient will use any such Confidential Information solely for the purpose of evaluating the Venture, and Recipient will not, under any circumstances, use the Confidential Information of the Discloser in any manner contrary to the best interests of, detrimental to, or in competition with Discloser.

(3) Recipient agrees to safeguard all Confidential Information disclosed by Discloser with the same degree of care with which it protects its own confidential information and that, without the written consent of Discloser, Recipient will not use such Confidential Information for its own benefit other than for the purposes of evaluating the Venture, and will not disclose such Confidential Information to any third party unless required to do so by competent legal authority. In the event Recipient receives notice of any legal proceeding to compel disclosure of Confidential Information provided by Discloser, it will promptly notify Discloser of such fact and afford it the opportunity to contest such proceeding.

(4) Upon the written request of Discloser, Recipient will: promptly return to Discloser all tangible forms of the Confidential Information provided by Discloser, including any copies made by the Recipient, destroy any software, machine readable code or other materials developed using the Confidential Information, and will not thereafter use or disclose the Confidential Information provided by Discloser, except as expressly permitted by this Agreement. Recipient shall also treat as confidential, for the term specified below, any documents, memoranda, notes, analyses, compilations, studies, and other writings that Recipient or its advisors prepare based on materials contained in Discloser's Confidential Information, though such documents et al shall remain the property of Recipient.

(5) Confidential Information may not be mechanically copied or otherwise reproduced without the express written permission of Discloser, except for such copies as Recipient may require pursuant to this Agreement for internal use in connection with its assessment of a Venture. To the extent that the original of such Confidential Information, as provided to Recipient, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized by Discloser prior to reproduction.

(6) All Confidential Information disclosed by Discloser to Recipient will remain the exclusive property of Discloser, and all rights to such Confidential Information will be held in trust by Recipient for the benefit of Discloser. Neither this Agreement nor the disclosure or revelation of Confidential Information hereunder will constitute or be construed as granting to Recipient, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which Discloser now or hereafter has title, or as imposing on Recipient any obligation, except as specified in this Agreement. Discloser does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.

(7) Recipient may provide access to the Confidential Information only to the employees having a need to know same for the aforesaid Venture evaluation purposes.

(8) Should access to the Confidential Information of Discloser by one or more of the employees of Recipient lead to improvement inventions in which one or more of such employees is named an inventor, Recipient agrees to instruct the employee to assign his or her rights in such improvement invention to Discloser. Recipient reserves a royalty-free, non-exclusive license, without right to sublicense, to any such improvement invention - but no license to any inventions of Discloser.

(9) If Discloser authorizes inspection of its facilities which employ technical information and know-how which may be used in the Venture, Recipient will observe the same confidentiality and use restrictions provided in this Agreement with respect to any such technical information and know-how which may come to the attention of, or be disclosed to, Recipient's employees during any such plant visit whether through discussions with such employees or through visual inspection of such plant facilities or otherwise.

(10) Discloser acknowledges that much of the Confidential Information provided pursuant to this Agreement will be obtained from its business records. Discloser believes its records are complete and accurate, but make no representations as to the completeness or accuracy of the Confidential Information therein contained and assume no responsibility or liability for the conclusions that may be derived from such Confidential Information. Discloser may not be held liable to Recipient for any errors or omissions in any of the Confidential Information disclosed to the other, nor for any liability to Recipient arising out of the use of any Confidential Information disclosed pursuant to this Agreement.

(11) The obligations set forth above will not be construed to prohibit:

- a. The use or disclosure of any information previously known to the Recipient or independently developed by employees or agents of Recipient who have no access, direct or indirect, to any Confidential Information provided by Discloser;
- b. The use or disclosure of any information which is or becomes publicly known through no wrongful act of the Recipient;

c. The use or disclosure of any information which is received from a third party which is under no confidentiality obligation to Discloser which provided the Confidential Information; or

d. The release of such Confidential Information is expressly agreed to and authorized by the Discloser as the case may be.

(12) This Agreement will remain in effect for a period of two (2) years from the date hereof unless sooner terminated or superseded by written agreement of the Parties; however, the term of this Agreement is subject to good faith negotiation between the parties to decrease the term of the Agreement. The confidentiality obligations imposed by this Agreement with respect to Confidential Information received prior to its termination will survive the termination hereof for a period of five (5) years.

(13) No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

(14) The validity, interpretation and effect of this Agreement will be governed by the laws of the State of Ohio.

(15) No amendment to the terms and conditions of this Agreement will be valid and binding on the Parties hereto unless made in writing and signed by an authorized representative of each of the Parties.

(16) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors, assigns, subsidiaries, and affiliates.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year shown.

Alotech, Ltd.

By: 

Name: John R. Grassi

Title: President & CEO

Dated: 13th Dec 2002

Consolidated Engineering Company, Inc.

By: 

Name: Paul M. Crafton

Title: Sr. Vice President

Dated: 12 December 2002

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A PROFESSIONAL LIMITED  
LIABILITY COMPANY



One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

D. Scott Sudderth  
Direct Dial: (404) 962-7527  
Direct Fax: (404) 870-8177  
E-Mail: ssudderth@wcsr.com

cc SPC

April 16, 2003

Mr. Franz Ruegg  
Consolidated Engineering Company, Inc.  
1971 McCollum Parkway  
Kennesaw, GA 30144

Mr. John Grassi  
Attn: Legal Department  
Alotech, LLC  
1971 McCollum Parkway  
Kennesaw, GA 30144

RE: Consent to Representation of Alotech, LLC and Consolidated Engineering Company  
Our Reference Number: C152 9009

Dear Mr. Ruegg and Mr. Grassi:

As you know, Womble Carlyle Sandridge & Rice, PLLC ("WCSR") currently serves as counsel to Consolidated Engineering Company ("CEC") in a number of matters, including patent and technology matters. We have been advised that Alotech, LLC ("Alotech") owns certain technology and inventions (collectively, the "Alotech Inventions") and that CEC and Alotech have negotiated, are negotiating and continue to negotiate a mutual understanding and agreements directed to the ownership, management, control and other handling of the Alotech Inventions and related, future inventions (the Alotech Inventions and related, future Inventions being collectively referred to herein as the "Subject Inventions"). WCSR is and will continue to represent CEC in those negotiations and in connection with any rights that CEC may have or acquire either in the Subject Inventions or any joint venture or other entity (the "Business Venture") that may be formed by CEC and Alotech as the result of their negotiations. We understand that Alotech is currently represented by its own legal counsel in the negotiations with CEC concerning the Business Venture and in connection with any rights that Alotech may have or acquire either in the Subject Inventions or in the Business Venture itself. We understand that Alotech's legal representation includes representation by the law firm of Fay, Sharpe, Fagan, Minnich & McKee, LLP ("FSFMM"), which currently represents Alotech in certain patent matters. We are also advised that CEC and Alotech have entered into a confidentiality agreement whereby the parties have exchanged and will continue to exchange confidential information related to the Subject Inventions and matters related to their negotiations regarding the proposed Business Venture.

In addition to WCSR's ongoing representation of CEC in connection with the negotiations between CEC and Alotech respecting the Business Venture, WCSR has been requested to represent Alotech in connection with certain patent applications relating to certain of the Subject Inventions, and to cooperate with FSFMM in its representation of Alotech with regard to the protection of past, present and future Subject Inventions. The proposed representation of Alotech will be limited to patent searching, the preparation and filing of patent applications relating to certain of the Subject Inventions, and representation of Alotech before the

United States Patent and Trademark Office in connection with the prosecution of patent applications relating to the Subject Inventions. We understand that we may also be asked to represent the interests of the Business Venture once formed by the parties.

This proposed representation may give rise to one or more conflicts of interest between CEC and Alotech and, thus, in accordance with the applicable rules of professional responsibility, we will require the advance consent and waiver of both CEC and Alotech of any such conflict that may arise as the result of our acceptance of the proposed representation of Alotech.

Under the applicable rules of professional responsibility, we may only undertake this concurrent representation of CEC and Alotech (and, if requested, the Business Venture) if:

- (1) our firm reasonably believes that the lawyers in our firm who will be involved in the representation will be able to provide competent and diligent representation to each client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against the other; and
- (4) each client gives informed consent, confirmed in writing.

The purpose of this letter is to confirm our discussions concerning the issues relating to a concurrent representation such as this, and to request that each of CEC and Alotech consent to this representation in writing, as required by the foregoing rules of professional responsibility. As we discussed, while CEC and Alotech are technically adverse to one another in their negotiations toward the proposed Business Venture, we believe that the interests of CEC and Alotech are generally aligned towards the common goal of establishing a successful Business Venture. Accordingly, as long as the parties' respective interests remain so aligned, we believe that we can render competent and diligent representation to each of CEC and Alotech, as required by the foregoing rules.

You acknowledge that this concurrent representation of Alotech and CEC will involve the sharing of confidential information of Alotech with WCSR, FSFMM and CEC. Further, while both WCSR and FSFMM will do their best, in good faith, to pursue the patent protection of the Subject Inventions in a manner that will be the benefit of both parties, it is ultimately the responsibility of CEC and Alotech to determine what is in their respective best interests, and to convey their respective determinations to counsel. To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position

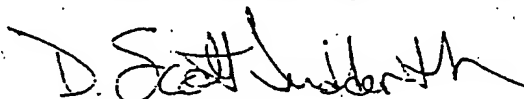
to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

By its signature below, each of CEC and Alotech represents that, after consultation with independent counsel, it consents to WCSR's continued representation of CEC including, without limitation, matters related to Alotech and the Subject Inventions and, further that it waives any conflict of interest that may arise as the result of WCSR's concurrent representation of CEC and Alotech in the matters described in this letter.

If a Business Venture is ultimately formed by CEC and Alotech, we will likewise request a separate consent letter from the Business Venture.

We look forward to the opportunity to representing CEC and Alotech. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,  
Womble Carlyle Sandridge & Rice, PLLC

  
D. Scott Sudderth

cc: Louis T. Isaf, Esq.  
M. Christopher Bolen, Esq.  
Ken Kendrick, Esq.

AGREED AND CONSENTED TO:

CONSOLIDATED ENGINEERING COMPANY, INC

ALOTECH, LLC

By: 

By: 

Title: President & CEO

Title: President & CEO

Date: April 23, 2003

Date: April 22, 2003

## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between Alotech Ltd., a company having a principal place of business at Two Commerce Park Square, 23220 Chagrin Blvd., #105, Cleveland, Ohio 44122 ("Discloser") and Consolidated Engineering Company, Inc. a corporation having a principal place of business at 1971 McCollum Parkway, Kennesaw, Georgia 30144-3637 ("Recipient") effective as of the latter date of execution below.

WHEREAS, Discloser and Recipient (hereinafter jointly referred to as the "Parties" or individually as "Party") are contemplating a venture or business arrangement (the "Venture");

WHEREAS, Discloser may find it necessary or desirable from time to time to disclose to Recipient certain technical, manufacturing, marketing, and sales information in written, oral, and/or machine readable form; and

WHEREAS, Discloser considers a significant portion of such material to be valuable, proprietary, secret, and confidential.

NOW THEREFORE, in consideration of the mutual understandings hereinafter set forth, the parties agree that the Confidential Information which will be delivered to certain employees of Recipient will be subject to the following terms and conditions:

(1) All information provided by Discloser to Recipient pertaining to casting techniques employing aggregate molds, methods for manufacturing cast metal parts and related equipment therefor, whether the source of that information is Discloser or a subsidiary, parent, or affiliate of Discloser, will be deemed to be "Confidential Information" when it is properly labeled as such. Any information that may be verbally or visually disclosed by Discloser to Recipient should be briefly summarized in writing, by either party, with a properly labeled copy of such writing promptly provided to the other party thereafter.

(2) Recipient will use any such Confidential Information solely for the purpose of evaluating the Venture, and Recipient will not, under any circumstances, use the Confidential Information of the Discloser in any manner contrary to the best interests of, detrimental to, or in competition with Discloser.

(3) Recipient agrees to safeguard all Confidential Information disclosed by Discloser with the same degree of care with which it protects its own confidential information and that, without the written consent of Discloser, Recipient will not use such Confidential Information for its own benefit other than for the purposes of evaluating the Venture, and will not disclose such Confidential Information to any third party unless required to do so by competent legal authority. In the event Recipient receives notice of any legal proceeding to compel disclosure of Confidential Information provided by Discloser, it will promptly notify Discloser of such fact and afford it the opportunity to contest such proceeding.

(4) Upon the written request of Discloser, Recipient will: promptly return to Discloser all tangible forms of the Confidential Information provided by Discloser, including any copies made by the Recipient, destroy any software, machine readable code or other materials developed using the Confidential Information, and will not thereafter use or disclose the Confidential Information provided by Discloser, except as expressly permitted by this Agreement. Recipient shall also treat as confidential, for the term specified below, any documents, memoranda, notes, analyses, compilations, studies, and other writings that Recipient or its advisors prepare based on materials contained in Discloser's Confidential Information, though such documents et al shall remain the property of Recipient.

(5) Confidential Information may not be mechanically copied or otherwise reproduced without the express written permission of Discloser, except for such copies as Recipient may require pursuant to this Agreement for internal use in connection with its assessment of a Venture. To the extent that the original of such Confidential Information, as provided to Recipient, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized by Discloser prior to reproduction.

(6) All Confidential Information disclosed by Discloser to Recipient will remain the exclusive property of Discloser, and all rights to such Confidential Information will be held in trust by Recipient for the benefit of Discloser. Neither this Agreement nor the disclosure or revelation of Confidential Information hereunder will constitute or be construed as granting to Recipient, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which Discloser now or hereafter has title, or as imposing on Recipient any obligation, except as specified in this Agreement. Discloser does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.

(7) Recipient may provide access to the Confidential Information only to the employees having a need to know same for the aforesaid Venture evaluation purposes.

(8) Should access to the Confidential Information of Discloser by one or more of the employees of Recipient lead to improvement inventions in which one or more of such employees is named an inventor, Recipient agrees to instruct the employee to assign his or her rights in such improvement invention to Discloser. Recipient reserves a royalty-free, non-exclusive license, without right to sublicense, to any such improvement invention - but no license to any inventions of Discloser.

(9) If Discloser authorizes inspection of its facilities which employ technical information and know-how which may be used in the Venture, Recipient will observe the same confidentiality and use restrictions provided in this Agreement with respect to any such technical information and know-how which may come to the attention of, or be disclosed to, Recipient's employees during any such plant visit whether through discussions with such employees or through visual inspection of such plant facilities or otherwise.

(10) Discloser acknowledges that much of the Confidential Information provided pursuant to this Agreement will be obtained from its business records. Discloser believes its records are complete and accurate, but make no representations as to the completeness or accuracy of the Confidential Information therein contained and assume no responsibility or liability for the conclusions that may be derived from such Confidential Information. Discloser may not be held liable to Recipient for any errors or omissions in any of the Confidential Information disclosed to the other, nor for any liability to Recipient arising out of the use of any Confidential Information disclosed pursuant to this Agreement.

(11) The obligations set forth above will not be construed to prohibit:

- a. The use or disclosure of any information previously known to the Recipient or independently developed by employees or agents of Recipient who have no access, direct or indirect, to any Confidential Information provided by Discloser;
- b. The use or disclosure of any information which is or becomes publicly known through no wrongful act of the Recipient;



- c. The use or disclosure of any information which is received from a third party which is under no confidentiality obligation to Discloser which provided the Confidential Information; or
- d. The release of such Confidential Information is expressly agreed to and authorized by the Discloser as the case may be.

(12) This Agreement will remain in effect for a period of two (2) years from the date hereof unless sooner terminated or superseded by written agreement of the Parties; however, the term of this Agreement is subject to good faith negotiation between the parties to decrease the term of the Agreement. The confidentiality obligations imposed by this Agreement with respect to Confidential Information received prior to its termination will survive the termination hereof for a period of five (5) years.

(13) No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

(14) The validity, interpretation and effect of this Agreement will be governed by the laws of the State of Ohio.

(15) No amendment to the terms and conditions of this Agreement will be valid and binding on the Parties hereto unless made in writing and signed by an authorized representative of each of the Parties.

(16) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors, assigns, subsidiaries, and affiliates.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year shown.

Alotech, Ltd.

By: 

Name: John R. Grassi

Title: President & CEO

Dated: 13<sup>th</sup> Dec 2002

Consolidated Engineering Company, Inc.

By: 

Name: Paul M. Crafton

Title: Sr. Vice President

Dated: 12 December 2002

## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between Alotech Ltd., a company having a principal place of business at Two Commerce Park Square, 23220 Chagrin Blvd., #105, Cleveland, Ohio 44122 ("Discloser") and Consolidated Engineering Company, Inc. a corporation having a principal place of business at 1971 McCollum Parkway, Kennesaw, Georgia 30144-3637 ("Recipient") effective as of the latter date of execution below.

WHEREAS, Discloser and Recipient (hereinafter jointly referred to as the "Parties" or individually as "Party") are contemplating a venture or business arrangement (the "Venture");

WHEREAS, Discloser may find it necessary or desirable from time to time to disclose to Recipient certain technical, manufacturing, marketing, and sales information in written, oral, and/or machine readable form; and

WHEREAS, Discloser considers a significant portion of such material to be valuable, proprietary, secret, and confidential.

NOW THEREFORE, in consideration of the mutual understandings hereinafter set forth, the parties agree that the Confidential Information which will be delivered to certain employees of Recipient will be subject to the following terms and conditions:

(1) All information provided by Discloser to Recipient pertaining to casting techniques employing aggregate molds, methods for manufacturing cast metal parts and related equipment therefor, whether the source of that information is Discloser or a subsidiary, parent, or affiliate of Discloser, will be deemed to be "Confidential Information" when it is properly labeled as such. Any information that may be verbally or visually disclosed by Discloser to Recipient should be briefly summarized in writing, by either party, with a properly labeled copy of such writing promptly provided to the other party thereafter.

(2) Recipient will use any such Confidential Information solely for the purpose of evaluating the Venture, and Recipient will not, under any circumstances, use the Confidential Information of the Discloser in any manner contrary to the best interests of, detrimental to, or in competition with Discloser.

(3) Recipient agrees to safeguard all Confidential Information disclosed by Discloser with the same degree of care with which it protects its own confidential information and that, without the written consent of Discloser, Recipient will not use such Confidential Information for its own benefit other than for the purposes of evaluating the Venture, and will not disclose such Confidential Information to any third party unless required to do so by competent legal authority. In the event Recipient receives notice of any legal proceeding to compel disclosure of Confidential Information provided by Discloser, it will promptly notify Discloser of such fact and afford it the opportunity to contest such proceeding.

(4) Upon the written request of Discloser, Recipient will: promptly return to Discloser all tangible forms of the Confidential Information provided by Discloser, including any copies made by the Recipient, destroy any software, machine readable code or other materials developed using the Confidential Information, and will not thereafter use or disclose the Confidential Information provided by Discloser, except as expressly permitted by this Agreement. Recipient shall also treat as confidential, for the term specified below, any documents, memoranda, notes, analyses, compilations, studies, and other writings that Recipient or its advisors prepare based on materials contained in Discloser's Confidential Information, though such documents et al shall remain the property of Recipient.

(5) Confidential Information may not be mechanically copied or otherwise reproduced without the express written permission of Discloser, except for such copies as Recipient may require pursuant to this Agreement for internal use in connection with its assessment of a Venture. To the extent that the original of such Confidential Information, as provided to Recipient, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized by Discloser prior to reproduction.

(6) All Confidential Information disclosed by Discloser to Recipient will remain the exclusive property of Discloser, and all rights to such Confidential Information will be held in trust by Recipient for the benefit of Discloser. Neither this Agreement nor the disclosure or revelation of Confidential Information hereunder will constitute or be construed as granting to Recipient, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which Discloser now or hereafter has title, or as imposing on Recipient any obligation, except as specified in this Agreement. Discloser does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.

(7) Recipient may provide access to the Confidential Information only to the employees having a need to know same for the aforesaid Venture evaluation purposes.

(8) Should access to the Confidential Information of Discloser by one or more of the employees of Recipient lead to improvement inventions in which one or more of such employees is named an inventor, Recipient agrees to instruct the employee to assign his or her rights in such improvement invention to Discloser. Recipient reserves a royalty-free, non-exclusive license, without right to sublicense, to any such improvement invention - but no license to any inventions of Discloser.

(9) If Discloser authorizes inspection of its facilities which employ technical information and know-how which may be used in the Venture, Recipient will observe the same confidentiality and use restrictions provided in this Agreement with respect to any such technical information and know-how which may come to the attention of, or be disclosed to, Recipient's employees during any such plant visit whether through discussions with such employees or through visual inspection of such plant facilities or otherwise.

(10) Discloser acknowledges that much of the Confidential Information provided pursuant to this Agreement will be obtained from its business records. Discloser believes its records are complete and accurate, but make no representations as to the completeness or accuracy of the Confidential Information therein contained and assume no responsibility or liability for the conclusions that may be derived from such Confidential Information. Discloser may not be held liable to Recipient for any errors or omissions in any of the Confidential Information disclosed to the other, nor for any liability to Recipient arising out of the use of any Confidential Information disclosed pursuant to this Agreement.

(11) The obligations set forth above will not be construed to prohibit:

- a. The use or disclosure of any information previously known to the Recipient or independently developed by employees or agents of Recipient who have no access, direct or indirect, to any Confidential Information provided by Discloser;
- b. The use or disclosure of any information which is or becomes publicly known through no wrongful act of the Recipient;

c. The use or disclosure of any information which is received from a third party which is under no confidentiality obligation to Discloser which provided the Confidential Information; or

d. The release of such Confidential Information is expressly agreed to and authorized by the Discloser as the case may be.

(12) This Agreement will remain in effect for a period of two (2) years from the date hereof unless sooner terminated or superseded by written agreement of the Parties; however, the term of this Agreement is subject to good faith negotiation between the parties to decrease the term of the Agreement. The confidentiality obligations imposed by this Agreement with respect to Confidential Information received prior to its termination will survive the termination hereof for a period of five (5) years.

(13) No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.


(14) The validity, interpretation and effect of this Agreement will be governed by the laws of the State of Ohio.

(15) No amendment to the terms and conditions of this Agreement will be valid and binding on the Parties hereof unless made in writing and signed by an authorized representative of each of the Parties.

(16) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors, assigns, subsidiaries, and affiliates.

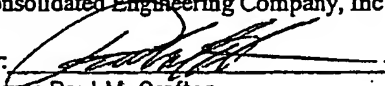
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year shown.

Alotech, Ltd.

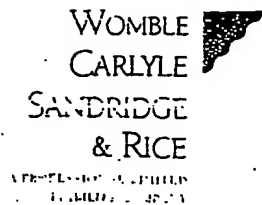
By:   
Name: John R. Grassi  
Title: President & CEO

Dated: 13<sup>th</sup> Dec 2002

Consolidated Engineering Company, Inc.

By:   
Name: Paul M. Crafton  
Title: Sr. Vice President

Dated: 12 December 2002



One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 373-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

D. Scott Sudderth  
Direct Dial: (404) 962-7527  
Direct Fax: (404) 870-8177  
E-Mail: ssudderth@wcsr.com

May 27, 2003

Mr. Franz Ruegg  
Consolidated Engineering Company, Inc.  
1971 McCollum Parkway  
Kennesaw, GA 30144

Mr. John Grassi  
Attn: Legal Department  
Alotech, LLC  
1971 McCollum Parkway  
Kennesaw, GA 30144

RE: Withdrawal from Representation of Alotech, LLC  
Our Reference Number: C152 9009

Dear Mr. Ruegg and Mr. Grassi:

This letter is further to our letter to you of April 16, 2003 (the "Representation Letter"). Unless otherwise defined in this letter, capitalized terms appearing in this letter will have the meaning given those terms in the Representation Letter.

As you know, in accordance with the Representation Letter, WCSR has represented and advised CEC in connection with its negotiations toward a proposed Business Venture with Alotech. Although the parties are continuing their discussions, to date the parties have not yet reached agreement concerning any proposed Business Venture.

In addition, pursuant to the Representation Letter, and at CEC's request and on Alotech's behalf, WCSR has filed two provisional patent applications for Subject Inventions and one trademark application for the mark ABLATION (collectively, the "Applications") in the U.S. Patent and Trademark Office (the "USPTO"). WCSR has taken no other action on Alotech's behalf and has received no confidential or proprietary information from Alotech relating to any proposed Business Venture with CEC.

The purpose of this letter is to inform you of our firm's withdrawal from our limited representation of Alotech in connection with the Applications, effective immediately. Accordingly, we will forward all of our files respecting the Applications to Alotech's law firm, FSFMM, or such other law firm as Alotech may designate in writing. We will take no further action on the Applications, except as representatives of CEC, and will forward any future correspondence or documents we receive from the USPTO directly to FSFMM or other designated firm for handling. We also suggest that FSFMM or any other firm designated by Alotech immediately file a power of attorney or substitute power of attorney, as the case may be, with the USPTO respecting each of the Applications, so that such documents and correspondence are sent directly to such firm in the future. At the request of FSFMM or other firm designated by Alotech, we will place a change of representative and address in the provisional application files at the USPTO.

As a consequence of our withdrawal from our representation, effective immediately our firm no longer represents Alotech. Except for the obligations described in the preceding paragraph, WCSR will have no further obligations to Alotech, either with respect to the Applications or otherwise. Our firm will hereafter represent only the interests of CEC. In light of the unrelated, limited nature of our prior representation of Alotech (i.e., with respect only to the Applications); we reserve the right to continue our representation of CEC in all matters, including but not limited to matters relating to any Business Venture that may be formed by the parties. Without limiting the scope of our representation of CEC, we note that, at the request of CEC and acting on CEC's behalf, we will continue to assist CEC with (i) the analysis of Subject Inventions, (ii) the preparation and review of patent applications for Subject Inventions, and (iii) the prosecution of such applications, but always and only as CEC's representative.

If you have any questions or wish to discuss this matter further, please contact me immediately so that we may address any questions you may have.

Very truly yours,

*WOMBLE CARLYLE SANDRIDGE & RICE, PLLC*

  
D. Scott Sudderth

cc: Louis T. Isaf, Esq.  
M. Christopher Bolen, Esq.  
Ken Kendrick, Esq.  
Bill Raper, Esq.



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1701 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

Louis T. Isaf  
Of Counsel  
Direct Dial: (404) 962-7523  
Direct Fax: (404) 870-8173  
E-mail: lisaf@wcsr.com

June 11, 2003

Jay F. Moldovanyi, Esq.  
Fay, Sharpe, Fagan, Minnich & McKee, LLP  
1100 Superior Avenue  
Seventh Floor  
Cleveland, Ohio 44114-2579

Re: Alotech LLC  
Our Reference Number: C152 9009

Dear Jay:

Womble Carlyle Sandridge & Rice, PLLC has formally withdrawn from its short representation of Alotech. A copy of our withdrawal letter dated May 27, 2003, to Alotech and CEC is attached for your reference.

With reference made to the withdrawal letter, we enclose herewith the following 2 U.S. provisional patent applications and 1 U.S. trademark application:

Application No. 60/460,250  
Filed: April 4, 2003  
Entitled: Microstructure of a Shaped Casting Solidified by A Mold Ablation Process

Application No. 60/465,413  
Filed: April 25, 2003  
Entitled: Casting Mold Manufacturing Process Using Inorganic Binder

Application No. 78/248,840  
Filed: May 13, 2003  
Entitled: ABLATION

Kindly, acknowledge safe receipt of these files.

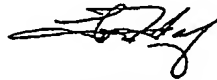
Please let me know if we can assist you with the transition of Powers of Attorney and contact information.

Jay F. Moldovanyi, Esq.  
Fay, Sharpe, Fagan, Minnich & McKee, LLP  
June 11, 2003  
Page 2

As reflected in the attached withdrawal letter, our action is taken to make clear that we represent solely CEC, while, for example, you represent Alotech. It is not our intention, by any means, to "walk away" from the joint project being engaged in by CEC and Alotech. On the contrary, we will remain fully involved as legal and patent representatives of CEC. In that capacity, we will, among other things, remain committed to the tasks set-out for us by Joe Oczkowski in his letter of April 4, 2003, addressed to both you and me. However, in fulfilling these tasks, we will prepare, at the request of CEC, documents, responses, and analyses, etc. and pass the same back to CEC, our client, for delivery to and filing by you, as appropriate, as counsel to Alotech. At CEC's request, we will from time-to-time interact directly with your offices. We continue to look forward to working with you in an effort to assist our respective clients in their cooperative business venture.

If you have any questions regarding any of this information, please give us a call.

Very truly yours,



Louis T. Isaf

DSS/ss  
Enclosures

cc: D. Scott Sudderth, Esq.  
Joseph H. Oczkowski, Esq.  
John Grassi (Alotech Ltd)  
Nesbit S. Kendrick III, Esq.



WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE

A PROFESSIONAL LIMITED  
LIABILITY COMPANY

One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

Nisbet S. Kendrick III

Direct Dial: (404) 888-7488  
Direct Facsimile: (404) 870-4861  
kkendrick@wcsr.com

March 11, 2004

Mr. J.R. Grassi  
ALLOTECH, LLC  
1558 Ridenour Parkway  
Kennesaw, Georgia 30152

Re: *Provisional Patent Application Docket No. EV298917007US, "Binder  
Compositions and Methods for Making Same" (the "Provisional Patent  
Application")*

Dear Mr. Grassi:

Your correspondence which bear the dates January 6, 2004 and January 30, 2004, addressed to Mr. Scott Sudderth at Womble Carlyle Sandridge & Rice, PLLC ("WCSR") has been referred to me for response.

Please be advised that WCSR has not provided counsel to Consolidated Engineering Company, Inc. ("CEC") with regard to business dispute with Allotech, LLC since the firm's withdrawal of representation of Allotech in accordance with our letter dated May 27, 2003. In November, when WCSR first learned that CEC and Allotech might become involved in a dispute regarding their past or future working arrangements, WCSR discontinued any representation of or counsel to CEC regarding Allotech other than to respond to a request for certain information directed to counsel for Allotech to WCSR. WCSR has continued to provide intellectual property representation to CEC on matters that predate the firm's limited representation of Allotech and will continue to do so. Allotech consented to that representation in correspondence executed on April 16, 2003, after consultation with its independent counsel. Since the date of our withdrawal from representation of Allotech, WCSR has not represented CEC with regard to a "Subject Invention," as that term is defined in the foregoing letter agreement, with the exception of filing the Provisional Patent Application discussed below.

Mr. J.R. Grassi  
March 11, 2004  
Page Number 2

In early September, at a time we understood that CEC and Allotech were continuing to pursue a joint venture, CEC requested that WCSR file a provisional patent application styled "*Binder Compositions and Methods for Making Same*" showing you as the inventor of the technology described therein. That application was filed on September 4, 2003. A copy of that application is enclosed for your records. We will forward the original application to Jay Moldovanyi at Fay, Sharpe, Fagan, Minnich & McKee, LLP as counsel to Allotech.

Please direct any further correspondence regarding the matters discussed in your correspondence dated January 6, 2004 and January 30, 2004 to my attention.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE  
*A Professional Limited Liability Company*



Nisbet S. Kendrick III

NSK/abv

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING  
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

ALOTECH, LTD., JOHN GRASSI, JOHN  
CAMPBELL, and CAMPBELL  
TECHNOLOGY, LTD.,

Defendants/Counter-Plaintiffs,

v.

WOMBLE, CARLYLE, SANDRIDGE &  
RICE, PLLC,

Counter-Defendant.

CIVIL ACTION NO. 04-1-01071

Jury Trial Requested

AFFIDAVIT OF DAVID N. LEFKOWITZ, ESQ.

STATE OF GEORGIA )

COUNTY OF FULTON )

Personally appeared before the undersigned officer, duly authorized to administer oaths,  
DAVID N. LEFKOWITZ, who, being sworn, deposes and says as follows:

1.

My name is David N. Lefkowitz. I am over the age of twenty-one and suffer from no  
legal disabilities.

2.

I give this affidavit based upon my own personal knowledge derived from my review of the Verified Answer to Verified Complaint for Damages, Specific Performance and Injunctive Relief and Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC ("Answer and Counterclaims") and the exhibits attached thereto in the above-referenced case, and from my education, training, and experience as a licensed attorney in the State of Georgia. This affidavit is given for the purpose of being attached to the Answer and Counterclaims in the above-stated case, as required by Georgia law, and for all other purposes allowed by Georgia law.

3.

I am an attorney licensed to practice law in the State of Georgia. I received a Juris Doctorate degree from Emory University in 1988. I am familiar with the standard of skill, care, and diligence normally possessed and utilized by attorneys in Georgia and elsewhere who represent clients in circumstances similar to those in which the Counter-Defendant, Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"), represented the Counter-Plaintiff Alotech, Ltd. ("Alotech") in the matter that forms one of the bases of the present case.

4.

For purposes of this affidavit, I assume the following allegations to be true:

(a) On April 16, 2003, Alotech and Consolidated Engineering Company, Inc. ("CEC") – who were engaged in a possible business venture relating to Alotech's technology (the "Ablation Technology") – executed an engagement letter with WCSR (the "Engagement Letter"), establishing WCSR's dual representation of both Alotech and CEC.

(b) The Engagement Letter includes the following conflicts of interest clause:

To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

(c) After the attorney-client relationship began and pursuant to the terms of the Engagement Letter, Alotech disclosed the Ablation Technology to WCSR.

(d) WCSR subsequently sent a letter to CEC and Alotech dated May 27, 2003, in which WCSR purported to withdraw from representing Alotech (the "Withdrawal Letter").

(e) On September 4, 2003, WCSR filed a provisional patent application at the instruction of CEC related to the subject matter disclosed by Alotech to WCSR. The subject matter of this application was intended by Alotech to be kept as a trade secret and not to be the subject of a patent filing.

(f) This September 4, 2003 provisional patent application named John Grassi, president of Alotech, as the inventor of the technology described therein.

(g) This September 4, 2003 provisional patent application was filed by WCSR at CEC's instruction more than three (3) months after WCSR purportedly withdrew from representing Alotech regarding the Ablation Technology.

(h) WCSR did not consult with Alotech or John Grassi before filing this application and did not disclose to Alotech or John Grassi until March 11, 2004, that the September 4 provisional patent application was filed.

5.

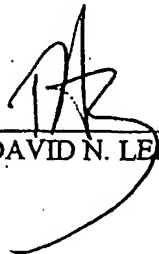
In my opinion, based upon my education, training and experience as a licensed attorney

in the State of Georgia, the standard of care applicable to Georgia attorneys who represent clients under circumstances such as those described above requires that the attorney should not use confidential information of a former client (obtained during the course of representing that former client) for the benefit of another client, and should not engage in any activity that presents a conflict of interest based on confidential information obtained from a former client

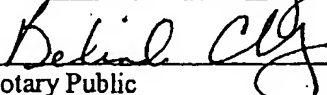
6.

In my opinion, based upon my education, training and experience as a licensed attorney, and upon my assumption that the above-recited summarized allegations are true, Counter-Defendant WCSR violated the required standard of skill, care and diligence, and, therefore, committed legal malpractice by filing the September 4, 2003 provisional patent application naming John Grassi as the inventor after having withdrawn from representing Alotech in or around May 27, 2003, and by failing to disclose the filing of that September 4, 2004 provisional application to John Grassi and Alotech for over eight (8) months.

FURTHER, AFFIANT SAITH NOT.

  
\_\_\_\_\_  
DAVID N. LEFKOWITZ

Sworn to and subscribed before me,  
this 9th day of July 2004.

  
\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

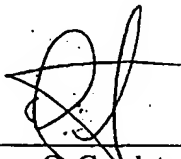
\_\_\_\_\_  
NOTARY PUBLIC, FULTON COUNTY, GEORGIA  
MY COMMISSION EXPIRES JULY 24, 2006

CERTIFICATE OF SERVICE

This is to certify that I have this date served counsel for all parties to this action with a copy of the foregoing Verified Answer To Verified Complaint For Damages, Specific Performance and Injunctive Relief and Verified Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC by hand delivery to:

Timothy H. Kratz, Esq.  
Luke Anderson, Esq.  
John A. Lockett, III, Esq.  
MCGUIRE WOODS LLP  
1170 Peachtree Street, N.E.  
Suite 2100  
Atlanta, Georgia 30309-7649

This 9<sup>th</sup> day of July, 2004.

  
\_\_\_\_\_  
Matthew C. Gaudet

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING  
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

ALOTECH, LTD., JOHN GRASSI, JOHN  
CAMPBELL, and CAMPBELL  
TECHNOLOGY, LTD.,

Defendants/Counter-Plaintiffs,

v.

WOMBLE CARLYLE SANDRIDGE &  
RICE, PLLC,

Additional Counter-Defendant

CIVIL ACTION NO. 04-1-01071

**WOMBLE, CARYLE, SANDRIDGE & RICE, PLLC's VERIFIED ANSWER**

Counter-Defendant Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR") files its verified answer to the counterclaim asserted against it, showing as follows:

1. WCSR admits that Counter-Plaintiffs purport to bring an action by way of counterclaim against Consolidated Engineering Company, Inc. ("CEC") and WCSR but denies that Counter-Plaintiffs' claims have any merit. WCSR denies all remaining allegations of paragraph 1.

2. WCSR denies the allegations of paragraph 2, except admits that Counter-Plaintiffs seek the relief set forth in the Counterclaims. WCSR denies that Counter-Plaintiffs are entitled to any relief whatsoever.



3. WCSR lacks sufficient knowledge or information to admit or deny the allegations of 3.

4. Admitted upon information and belief.

5. Admitted upon information and belief.

6. Admitted upon information and belief.

7. WCSR admits the allegations of the first two sentences of paragraph 7 and that CEC sells its furnaces to auto manufacturers, among others. WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of the third sentence of paragraph 7.

8. Admitted.

9. WCSR admits Counter-Plaintiffs' allegation that "WCSR is one of the hundred largest law firms in the United States" upon information and belief. WCSR admits the remaining allegations of paragraph 9.

10. Admitted.

11. WCSR admits that it was not a party to this action at the time Counter-Plaintiffs originally filed their Counterclaims, is subject to this Court's jurisdiction, and can be served with process. WCSR denies the remaining allegations of paragraph 11.

12. WCSR admits that venue is proper in this Court.

13. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 13, except that WCSR admits upon information and belief that John Campbell is a member of Alotech, a physicist, and a professor at the University of Birmingham.

14. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 14, except that WCSR admits upon information and belief that John Grassi is a metallurgical engineer and previously worked for Alcoa Inc.

15. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 15.

16. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 16.

17. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 17, except that WCSR admits on information and belief that CEC and Alotech entered into a confidentiality agreement in furtherance of their discussions concerning a joint business venture.

18. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 18, except that WCSR admits that CEC and Alotech endeavored to negotiate a joint business venture.

19. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 19.

20. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 20, except that WCSR admits that CEC and Alotech engaged in negotiations regarding a joint business venture and, on information and belief, signed certain written agreements.

21. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 21.

22. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 22, except that WCSR admits that at some point CEC and Alotech began negotiating the terms of a written joint venture agreement.

23. WCSR admits that Alotech has used Fay, Sharpe, Fagan, Minnick & McKee, LLP ("Fay Sharpe"), a law firm located in Cleveland, Ohio, for intellectual property work. WCSR lacks knowledge or information sufficient to admit or deny the allegation that Alotech "had always" used Fay Sharpe.

24. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 24.

25. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 25.

26. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 26.

27. WCSR admits that WCSR, on the one hand, and Alotech and CEC, on the other hand, executed an engagement letter setting forth the terms and conditions under which WCSR would provide legal services to Alotech and CEC jointly (the "Engagement Letter"). WCSR admits that the terms and conditions contained in the Engagement Letter are consistent with Georgia's Rules of Professional Conduct, which govern WCSR's practice of law in Georgia. A copy of the Engagement Letter appears to be attached as Exhibit B to the Counterclaims. WCSR states that the Engagement Letter speaks for itself. WCSR denies the allegations of paragraph 27 to the extent that they mischaracterize, misquote, or contradict the Engagement Letter.

28. WCSR admits that the Engagement Letter refers to a confidentiality agreement between Alotech and CEC. WCSR denies all remaining allegations of paragraph 28.

29. WCSR admits that Alotech disclosed certain matters to WCSR and CEC so that WCSR could provide legal services as described in the Engagement Letter to Alotech and CEC in connection with their business venture. WCSR denies the remaining allegations of paragraph 29.

30. WCSR denies the allegations of paragraph 30, except admits that attorneys from WCSR attended a meeting on May 1, 2003 attended by representatives from CEC and Alotech.

31. WCSR admits that CEC's General Counsel sent a communication to WCSR, among others, that attached a spreadsheet. WCSR states that that communication is a written document that speaks for itself. WCSR denies the allegations of paragraph 31 to the extent they mischaracterize or contradict the communication. WCSR denies the remaining allegations of paragraph 31.

32. WCSR denies the allegations of paragraph 32, except admits that, among other attendees, two WCSR attorneys and three Alotech representatives, including Campbell and Grassi, attended a meeting on May 1, 2003 at CEC's offices in Kennesaw, Georgia, and that Jay Moldovanyi, an attorney from Fay Sharpe who represented Alotech in intellectual property matters, also attended a portion of the meeting by telephone.

33. WCSR admits that CEC and Alotech made a demonstration at the May 1, 2003 meeting and that WCSR made an audiotape recording of portions of the May 1 meeting. WCSR lacks knowledge or information sufficient to admit or deny whether what was demonstrated constituted what Counter-Plaintiffs call "Ablation Technology." WCSR denies the remaining allegations of paragraph 33.

34. Denied.

35. WCSR admits WCSR sent to Alotech a letter dated May 27, 2003 withdrawing from WCSR's representation of Alotech (the "Withdrawal Letter"). A copy of the Withdrawal Letter appears to be attached as Exhibit C to the Counterclaims. WCSR states that the Withdrawal Letter speaks for itself. WCSR denies the allegations of paragraph 35 to the extent that they mischaracterize, misquote, or contradict the Withdrawal Letter. WCSR denies all remaining allegations of paragraph 35.

36. Admitted.

37. Denied.

38. WCSR admits that it continued to represent CEC after withdrawing from the representation of Alotech. WCSR denies the remaining allegations of paragraph 38.

39. WCSR admits that at some point in time CEC and Alotech were in discussions with Hydro Aluminum Deutschland GmbH ("Hydro Aluminum") regarding a business relationship between the CEC/Alotech joint venture and Hydro Aluminum. WCSR denies the remaining allegations of paragraph 39.

40. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 39, except admits on information and belief that Alotech, CEC, and Hydro Aluminum had entered into a Letter of Intent and that Alotech and CEC had entered into a Product Marketing Distribution License Agreement.

41. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 41.

42. WCSR admits that it continued to represent CEC after withdrawing from its representation of Alotech. WCSR denies the remaining allegations of paragraph 42.

43. WCSR admits that Lou Isaf, an attorney from WCSR, sent a letter dated June 11, 2003 to Jay Moldovanyi, an attorney from Fay Sharpe. WCSR further admits that a copy of the June 11, 2003 letter appears to be attached as Exhibit D to the Counterclaims. WCSR states that the June 11, 2003 letter speaks for itself. WCSR denies the allegations of paragraph 43 to the extent that they mischaracterize, misquote, or contradict the June 11, 2003 letter. WCSR denies all remaining allegations of paragraph 43.

44. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 44, except admits that CEC provided to WCSR in June 2003 a draft patent application that, on information and belief, had been prepared by Fay Sharpe.

45. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 45 with respect to demands allegedly made by Alotech to CEC and with respect to what CEC did or did not do. WCSR denies the remaining allegations of paragraph 45.

46. WCSR denies the allegations of paragraph 46, except admits that WCSR filed a patent application on CEC's behalf on July 10, 2003.

47. WCSR admits that at the time of filing, WCSR did not disclose to Alotech the filing of the July 10, 2003 patent application on CEC's behalf. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 47 with respect to what CEC did or did not do.

48. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 48.

49. WCSR admits that on September 4, 2003, WCSR filed a provisional patent application at CEC's request and direction. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 49 concerning what CEC did or did not disclose to

Grassi and concerning "the core aspects of the Ablation Technology." WCSR denies the remaining allegations of paragraph 49.

50. WCSR admits that on September 4, 2003, WCSR filed a provisional patent application at CEC's request and direction regarding a chemical binder. WCSR states that the provisional patent application speaks for itself. WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of paragraph 50.

51. WCSR admits that WCSR filed the provisional patent application, that the provisional patent application named Grassi as an inventor, and that WCSR did not inform Grassi of the provisional patent application. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 51 concerning what CEC did or did not disclose to Alotech or Grassi and concerning Alotech and Grassi's knowledge of the provisional patent application. WCSR denies the remaining allegations of paragraph 51.

52. WCSR admits that it received the "schedule of Alotech technology" that is described in paragraph 52. WCSR denies the remaining allegations of paragraph 52.

53. WCSR admits that it filed the September 4, 2003 provisional patent application at the direction of CEC more than three months after WCSR withdrew from representing Alotech.

54. WCSR admits that it did not inform Alotech of the September 4, 2003 provisional patent application. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 54 concerning the actions of CEC. WCSR denies the remaining allegations of paragraph 54.

55. WCSR admits that in September 2003 it did not provide Alotech the provisional patent application that was converted to a utility patent application filed on July 10, 2003.

WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 55 concerning the actions of CEC. WCSR denies the remaining allegations of paragraph 55.

56. Denied.

57. Denied.

58. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 58.

59. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 59.

60. Denied.

61. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 61.

62. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 62.

63. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 63, except that WCSR admits it understood generally that CEC wanted WCSR to be involved in its negotiations with Alotech.

64. Denied.

65. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 65, except that WCSR admits that Fred Isaf is the brother of Lou Isaf and that CEC retained McGuireWoods to represent CEC.

66. WCSR admits that Grassi sent a communication to WCSR making certain claims against WCSR. WCSR states that the communication speaks for itself.



67. WCSR admits that McGuireWoods filed a lawsuit against Counter-Plaintiffs on CEC's behalf. WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of paragraph 67.

68. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 68.

69. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 69.

70. WCSR denies the allegations of the first sentence of paragraph 70. WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of paragraph 70.

71. WCSR admits that on March 11, 2004, Nisbet S. Kendrick III, in his capacity as counsel to WCSR, sent a letter to Grassi. WCSR admits that a copy of the March 11, 2004 letter appears to be attached as Exhibit E to the Counterclaims. WCSR states that the March 11, 2004 letter is a written document that speaks for itself. WCSR denies the allegations of paragraph 71 to the extent they mischaracterize, misquote, or contradict the March 11, 2004 letter. WCSR further admits that a copy of the September 4, 2003 provisional patent application was intended to be enclosed with the March 11, 2004 letter but erroneously was not. WCSR denies the remaining allegations of paragraph 71.

72. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 72.

73. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 73.

74. WCSR denies that it has engaged in any "misconduct." WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of paragraph 74.

75. WCSR states that CEC's Complaint speaks for itself. WCSR denies the allegations of paragraph 75 to the extent they mischaracterize or inaccurately describe the allegations of CEC's Complaint.

76. WCSR denies that it has engaged in any "wrongdoing" or "wrongful activity." WCSR lacks knowledge or information sufficient to admit or deny the remaining allegations of paragraph 76.

77. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 77.

78. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 78.

79. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 79.

80. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 80.

81. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 81.

82. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 82.

83. WCSR admits that Counter-Plaintiffs' Counterclaims seeks certain relief based on certain causes of action, but WCSR denies that Counter-Plaintiffs' claims have any merit whatsoever or that they are entitled to any relief.

84-90. WCSR states that the allegations of paragraphs 84 through 90 are directed solely toward Counter-Defendant CEC; accordingly, WCSR is not required to admit or deny them. To the extent a response is deemed required, they are denied.

91. WCSR incorporates by reference its responses to paragraphs 1 through 90.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97-114. WCSR states that the allegations of paragraphs 97 through 114 are directed solely toward Counter-Defendant CEC; accordingly, WCSR is not required to admit or deny them. To the extent a response is deemed required, they are denied.

115. WCSR incorporates by reference its responses to paragraphs 1 through 114.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. WCSR admits that it filed patent applications at CEC's direction in the U.S.

Patent and Trademark Office. WCSR denies the remaining allegations of paragraph 120.

121. Denied.

122. Denied.

123. Denied.

124. WCSR lacks knowledge or information sufficient to admit or deny the allegations of paragraph 124 concerning steps taking by Alotech to safeguard information. WCSR denies the remaining allegations of paragraph 124.

125. Denied.

126-140. WCSR states that the allegations of paragraph 126 through 140 are directed solely toward Counter-Defendant CEC; accordingly, WCSR is not required to admit or deny them. To the extent a response is deemed required, they are denied.

141. WCSR incorporates by reference its responses to paragraphs 1 through 140.

142. The allegations of paragraph 142 state a legal conclusion that WCSR is not required to admit or deny; to the extent a response is required, they are denied.

143. The allegations of paragraph 143 state a legal conclusion that WCSR is not required to admit or deny; to the extent a response is required, they are denied.

144. The allegations of paragraph 144 state a legal conclusion that WCSR is not required to admit or deny; to the extent a response is required, they are denied.

145. The allegations of paragraph 145 state legal conclusions that WCSR is not required to admit or deny; to the extent a response is required, they are denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. WCSR incorporates by reference its responses to paragraphs 1 through 149.

151. Admitted.

152. Denied.

153. Denied.

154. Denied.

155. WCSR admits that Counter-Plaintiffs attached an affidavit to their Counterclaims.

WCSR denies that the affidavit satisfies the requirements of the Civil Practice Act.

156. WCSR incorporates by reference its responses to paragraphs 1 through 155.

157. Denied.

158. Admitted.

159. WCSR states that the Engagement Letter speaks for itself.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. WCSR incorporates by reference its responses to paragraphs 1 through 163.

165. The allegations of paragraph 165 state legal conclusions that WCSR is not required to admit or deny; to the extent a response is deemed required, they are denied.

166. Denied.

167. The allegations of paragraph 167 state legal conclusions that WCSR is not required to admit or deny; to the extent a response is deemed required, they are denied.

168. Denied.

169. Denied.

170. Denied.

171-177. WCSR states that the allegations of paragraphs 171 through 177 are directed solely toward Counter-Defendant CEC; accordingly, WCSR is not required to admit or deny them. To the extent a response is deemed required, they are denied.

178. WCSR incorporates by reference its responses to paragraphs 1 through 177.

179. Denied.

180. WCSR incorporates by reference its responses to paragraphs 1 through 179.

181. Denied.

182. WCSR denies Counter-Plaintiffs' Prayer for Relief in all respects.

183. WCSR denies all other allegations of the Counterclaims not expressly admitted herein.

#### **ADDITIONAL DEFENSES**

Without assuming the burden of proof where it otherwise lies with Counter-Plaintiffs, WCSR pleads the following additional defenses:

##### **FIRST DEFENSE**

The Counterclaims against WCSR fail to state a claim upon which relief can be granted.

##### **SECOND DEFENSE**

The Counterclaims against WCSR fail to plead that WCSR aided and abetted fraud with the particularity required by O.C.G.A. § 9-11-9(b)

##### **THIRD DEFENSE**

The Counterclaims against WCSR fail to state a claim for professional malpractice because the affidavit attached to the Counterclaims fails to comply with O.C.G.A. § 9-11-9.1.

#### **FOURTH DEFENSE**

Counter-Plaintiffs' claims against WCSR are barred, in whole or part, by Counter-Plaintiffs' unclean hands, estoppel, and/or waiver.

#### **FIFTH DEFENSE**

Counter-Plaintiffs' claims against WCSR are barred, in whole or part, because any alleged injuries and damages were the direct result of Counter-Plaintiffs' own voluntary conduct.

#### **SIXTH DEFENSE**

Counter-Plaintiffs' claims against WCSR are barred, in whole or part, because Counter-Plaintiffs have failed to mitigate their damages.

#### **SEVENTH DEFENSE**

Counter-Plaintiffs' claims against WCSR are barred, in whole or part, because Counter-Plaintiffs' alleged injury and damages were caused by persons other than WCSR and not under WCSR's control.

WHEREFORE, WCSR, having fully answered Counter-Plaintiffs' Counterclaims; prays:

- (1) that the Counterclaims against WCSR be dismissed with prejudice;
- (2) that judgment be entered in WCSR's favor,
- (3) that all costs of this action be taxed against the Counter-Plaintiffs, and
- (4) for such other and further relief as the Court deems proper.

This 4<sup>th</sup> day of October, 2004.

KING & SPALDING LLP



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Georgia Bar No. 449750  
John P. Brumbaugh  
Georgia Bar No. 08538  
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Atlanta, GA 30303  
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Atlanta, Georgia 30309



**VERIFICATION**

County of Fulton     )

State of Georgia     )

Louis T. Isaf, being duly sworn, deposes and says:


1.     My name is Louis T. Isaf. I am Of Counsel to the law firm of Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"), a counter-defendant in this action.

2.     I am authorized to make this verification on behalf of WCSR.

3.     I have read the foregoing Womble, Carlyle, Sandridge & Rice, PLLC's  
Verified Answer.

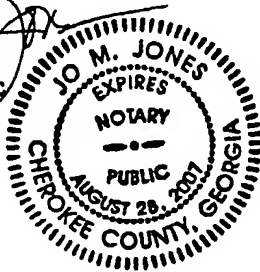
4.     The responses of WCSR are true and correct to the best of my  
knowledge, information, and belief.

Womble, Carlyle, Sandridge & Rice, PLLC

  
By: Louis T. Isaf

Sworn to and subscribed  
Before me this 4th day of  
October, 2004.

  
Notary Public



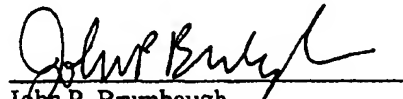
**CERTIFICATE OF SERVICE**

This is to certify that I have this date served counsel for all parties to this action with a copy of the foregoing Womble Carlyle Sandridge & Rice, PLLC's Verified Answer by depositing same in the United States Mail in an envelope with adequate postage affixed thereon to ensure delivery via First Class Mail as follows:

Timothy H. Kratz, Esq.  
Luke Anderson, Esq.  
John A. Lockett, III, Esq.  
McGuire Woods LLP  
1170 Peachtree Street, N.E.  
Suite 2100  
Atlanta, Georgia 30309

L. Norwood Jameson, Esq.  
Matthew C. Gaudet, Esq.  
Matthew S. Yungwirth, Esq.  
Duane Morris LLP  
1180 West Peachtree Street  
Suite 700  
Atlanta, Georgia 30309

This 4<sup>th</sup> day of October, 2004.

  
John P. Brumbaugh

COPY

COBB COUNTY, GA  
FILED IN OFFICE

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

*Jay C. Stephens*  
COBB SUPERIOR COURT CLERK

CONSOLIDATED )  
ENGINEERING COMPANY, )  
Plaintiff, )

v. )

Civil Action No. 04-1-01071

ALOTECH, LTD., LLC, )  
JOHN GRASSI, )  
JOHN CAMPBELL, and )  
CAMPBELL TECHNOLOGIES, )  
Defendants )

Jury Trial Requested

WOMBLE, CARLYLE, )  
SANDRIDGE & RICE, PLLC )  
Counter- )  
Defendant )

**AMENDED COMPLAINT FOR DAMAGES,  
SPECIFIC PERFORMANCE, AND INJUNCTIVE RELIEF**

Pursuant to O.C.G.A. §9-11-15(a), Plaintiff Consolidated Engineering Company ("CEC") for its Amended Complaint against Defendants Alotech, Ltd., LLC, ("Alotech"); John Grassi ("Grassi"); John Campbell, ("Campbell"); and Campbell Technologies respectfully states the following:

**Nature of Action**

1. CEC is a world leader in heat processing technology with over forty years of experience and over fifty-four U.S. and foreign patents. In February 2003, while negotiating a joint venture opportunity between CEC

and Alotech, Alotech's president and then majority shareholder, transferred his entire interest in Alotech to CEC. Proceeding in part on the well founded belief that it was or would be the majority shareholder of Alotech, CEC proceeded to invest over \$750,000 in Alotech to fund the research and refinement of a process known as Ablation Technology. Recently, Grassi and Alotech's other shareholders have sought to repudiate Grassi's stock transfer to CEC, thus freezing CEC out of the company and thus claiming the Ablation Technology for itself. Alotech's stated intention to sell all or a portion of Alotech or the Ablation Technology to a third party motivates the recent actions of Alotech and its shareholders.

**Parties, Jurisdiction, and Venue**

2. CEC is a Georgia company with its worldwide and U.S. headquarters located in Kennesaw, Georgia.
3. Alotech is an Ohio limited liability company with its principal place of business located at 1558 Ridenour Parkway, Kennesaw, Georgia 30152 in Cobb County. Alotech may be served by delivering the Summons and Complaint to its registered agent at:

1932 Service Corp.  
50 Public Square, Suite 1300  
Cleveland, Ohio 44113

4. Jurisdiction over Alotech is proper in that it is a resident of Georgia, and because this Court has jurisdiction over Alotech pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.

5. Grassi is a Georgia resident residing at 1558 Ridenour Parkway, Kennesaw, Georgia 30152 in Cobb County. Grassi may be served by delivering the Summons and Complaint to:

1558 Ridenour Parkway  
Kennesaw, Georgia 30152

6. Jurisdiction over Grassi is proper in that he is a resident of Georgia residing in Cobb County.

7. Campbell is a resident of West Malvern in the United Kingdom and may be served by delivering the Summons and Complaint to:

Park Road  
West Malvern WR14 4BJ  
United Kingdom

8. This Court has jurisdiction over Campbell pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.

9. Campbell Technologies is a United Kingdom corporation and may be served by delivering the Summons and Complaint to:

Park Road  
West Malvern WR14 4BJ  
United Kingdom

10. This Court has jurisdiction over Campbell Technologies pursuant to Georgia's long arm statute, O.C.G.A. §9-10-91.

11. Venue is proper in this Court for all Defendants pursuant to O.C.G.A. §9-10-93.

### **Factual Background**

12. CEC is a world leader in heat processing technology with over forty years of experience and over fifty-four U.S. and foreign patents. CEC's specialized industrial foundry systems have been used around the world by companies such as Ford Motor Company, Daimler-Chrysler (Mercedes), Barvarian Motor Works (BMW), to precision manufacture heat treated aluminum parts.

13. In order to maintain its competitive edge over the competition, CEC invests heavily in research and development. Over the past Five years, CEC has invested over \$1,700,000 to setup a state of the art research facility at its U.S. headquarters in Kennesaw, Georgia. Automobile manufacturers from around the world have conducted extensive research and development at CEC's testing facility.

### **Professor John Campbell**

14. In advancement of CEC's research strategy it sponsored Professor John Campbell's research relating to the heat treatment of

aluminum alloys. Campbell conducted the research at the University of Birmingham in the United Kingdom, where he is a professor. CEC paid over £110,000 to have this research performed, which was completed on or around March 2003.

15. During the course of Campbell's research, he became intimately familiar with CEC's proprietary technology, plans for future research, and its strategic business plans so his research would serve the best interests of the company. Campbell was a trusted business and technical advisor to CEC and its senior management.

16. The research that Campbell performed for CEC in 1999 to 2002 time frame was the technical foundation for a new ablation forming technique for use with aluminum alloys. Through this ablation technique, a knife like water stream is used to rapidly quench the molten aluminum alloy and simultaneously remove the casting.

#### **Joint Venture Discussions**

17. Alotech was incorporated in January 1999 with Grassi and Campbell Technologies as its sole members. Grassi was Alotech's majority stakeholder, owning a fifty-one percent interest and serving as its President and Chief Executive Officer (CEO). Campbell Technologies owns the remaining forty-nine percent of Alotech. Upon information and belief, John

Campbell is the president, majority shareholder, and controlling person of Campbell Technologies.

18. With the intent to form a continuing business relationship, CEC and Alotech entered into a Confidential Disclosure Agreement on December 13, 2002, that would permit the exchange of high level business information so a deal could be evaluated. A true and accurate copy of which is attached hereto as Exhibit A.

19. Beginning shortly thereafter and continuing through January 2004, CEC and Alotech have actively negotiated a joint venture between the two companies.

20. As part of their discussions, CEC and Alotech entered into a written agreement on February 20, 2003 that established a joint venture framework. This agreement called for CEC to invest \$2,000,000 in a newly formed joint venture company and receive a thirty percent (30%) ownership interest. Alotech's planed contribution to capital was an undetermined amount of money and its technical know-how for a seventy percent (70%) ownership interest in the joint venture company. A true and accurate copy of this agreement is attached hereto as Exhibit B.

21. With both parties impatient to pursue their business relationship in order to capture opportunities in the market place, Grassi transferred his



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fifty-one percent (51%) interest in Alotech to CEC as memorialized in his written agreement dated February 21, 2003. Thus, making CEC the majority owner of Alotech. A true and accurate copy of Grassi's ownership transfer is attached hereto as Exhibit C.

22. Immediately thereafter CEC and Alotech teamed up to further develop the technology known as the Ablation Process and to capitalize on the market potential for this technology. CEC provided Alotech office space at its Kennesaw headquarters and Alotech shifted its base of operations from Ohio to Kennesaw. During this same time frame, CEC invested an additional \$750,000 in Alotech's research and refinement of the Ablation Technology since February 21, 2003 believing that it was or would be the majority shareholder of Alotech.

#### **The Hydro Aluminum Deal**

23. In anticipation of having Hydro Aluminum Deutschland GmbH fund additional research to evaluate the Ablation Technology's application to its process, CEC and Alotech made their own agreement regarding the marketing, distribution, and licensing of rights of the Ablation Technology. A true and accurate copy of the parties Product Marketing, Distribution and License Agreement dated June 12, 2003 is attached hereto as Exhibit D.

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24. Shortly thereafter on June 30, 2003, Hydro Aluminum, CEC, and Alotech signed a Letter of Intent agreement memorializing their intent to explore and test the application of the Ablation Technology for manufacturing certain of Hydro Aluminum's cast automotive parts (the Hydro Project). Hydro Aluminum paid CEC \$90,000 to perform this testing. A true and accurate copy of the Hydro Letter of Intent is attached hereto as Exhibit E.

25. CEC personnel and Grassi on behalf of Alotech performed the Hydro Project testing at CEC's research and development center. During September 2003, Hydro Aluminum executives traveled from Germany to Atlanta to review the progress of the Hydro Project and concluded that the Ablation Technology was not sufficiently developed for use in its operation at this time.

26. While the Hydro project was ongoing, CEC and Alotech continued their negotiations for a joint venture and on August 18, 2003 the parties signed a second outline for a joint venture. A true and accurate copy of the Outline for Joint Venture is attached hereto as Exhibit F.

**Campbell and Campbell Technologies  
Attempt to Squeeze CEC Out of Alotech**

27. By letter dated October 29, 2003 from their legal counsel, Campbell and Campbell Technologies asserted formally in writing for the

first time that Grassi's transfer of ownership in Alotech to CEC that occurred more than eight months earlier was ineffective. Campbell and Campbell Technologies contended that under the terms of Alotech's Operating Agreement no transfer of ownership could be made without their consent.

28. CEC's counsel responded to Campbell's counsel on November 18, 2003 that they were evaluating Campbell's claim.

29. Campbell further demanded through his counsel's letter dated December 22, 2003 that CEC either relinquish or clarify its ownership claim in Alotech.

#### **Intellectual Property Funded By CEC**

30. On or around July 9, 2003 Alotech filed a non-provisional patent application with the United States Patent and Trademark Office, entitled "Mold-Removal Casting Method and Apparatus." Upon information and belief, this patent application embodies core technology, known as Ablation Technology, the development of which was funded by CEC.

31. Upon information and belief, Grassi, Campbell, and Alotech have filed other yet to be identified U.S. and foreign patent applications

embodying core technology, known as Ablation Technology, the development of which was funded by CEC.

**Alotech Threatens To Sell Its Technology to Alcoa**

32. Beginning in early December 2003, and repeated numerous times since then, Grassi, has threatened that if CEC did not immediately agree to Alotech's demands for a joint venture agreement that Alotech would sell all of its Ablation Technology, including the patents developed with CEC's funding, to Alcoa, Inc.

**Count I – Fraud  
(Against all Defendants)**

33. The allegations contained in Paragraphs 1 through 32 are incorporated herein by reference.

34. Grassi and Alotech intentionally misrepresented to CEC Grassi's authority to transfer his Alotech ownership.

35. Upon information and belief, upon determining that Alotech's Operating Agreement required the consent of its remaining shareholders to effectuate a transfer of ownership, Defendants conspired to and did intentionally conceal their knowledge of this requirement in order to induce CEC to fund, or continue funding, the research and implementation of the Ablation Technology.

36. Defendants knew, or should have known, that at all times since February 21, 2003 that CEC thought it owned or would own fifty-one percent of Alotech, which is why CEC continued to fund Alotech's development of the Ablation Technology, a benefit that Alotech willfully accepted. At no time did Alotech ever repudiate any benefit that CEC conferred on it, thus leading CEC to believe that Alotech and its shareholders acquiesced in Grassi's assignment to CEC.

37. In justified reliance on Defendants' representations, CEC invested more than \$750,000 in Alotech to fund the development of the Ablation Technology. Accordingly, CEC has been damaged in an amount not yet fully determined, but at least \$750,000.

38. Defendants' intentional misrepresentations were made with wilful, wanton, and reckless disregard for the truth of the matter with a deliberate intent to harm CEC. CEC should therefore be awarded exemplary damages in an amount sufficient to punish them for their conduct.

**Count II – Constructive Fraud  
(Against all Defendants)**

39. The allegations contained in Paragraphs 1 through 38 are incorporated herein by reference.

40. Grassi and Alotech misrepresented to CEC Grassi's authority to transfer his Alotech ownership, and at all times thereafter Defendants

concealed their belief that the transfer was inoperative in order to induce CEC's further financial investment in the Ablation Technology.

41. Upon information and belief, upon determining that Alotech's Operating Agreement required the consent of its remaining shareholders to effectuate a transfer of ownership, Defendants conspired to and did intentionally conceal their knowledge of this requirement in order to induce CEC to fund, or continue funding, the research and implementation of the Ablation Technology.

42. Believing that CEC owned or would own fifty-one percent of Alotech, it invested more than \$750,000 in Alotech to fund its development and refinement of the Ablation Technology.

43. Defendants' misrepresentations were made with wilful, wanton, and reckless disregard for the truth of the matter with a deliberate intent to harm CEC. CEC should therefore be awarded exemplary damages in an amount sufficient to punish Defendants for their conduct.

**Count III – Breach of Contract  
(Against Grassi)**

44. The allegations contained in Paragraphs 1 through 43 are incorporated herein by reference.

45. By written agreement dated February 21, 2003, Grassi transferred his fifty-one percent (51%) interests in Alotech to CEC, which consists of 1 unit of Class A ownership and 525 units of Class B ownership.

46. Grassi has breached this agreement by failing to transfer his Class A and B shares to CEC.

47. CEC has performed all of its duties and obligations under the February 21, 2003 agreement.

48. CEC has been harmed as a direct result of Grassi's breach.

**Count IV – Specific Performance**  
**(Against All Defendants)**

49. The allegations contained in Paragraphs 1 through 48 are incorporated herein by reference.

50. Ownership of Alotech is a unique property right, for which no adequate substitute or replacement exists.

51. After Grassi transferred his ownership interests to CEC, Grassi and Campbell made numerous in person visits to CEC's worldwide headquarters in Kennesaw. During these in-person meetings it was discussed and common knowledge to Grassi and Campbell (personally and as Campbell Technologies' representative) that CEC thought it was a fifty-one percent shareholder of Alotech.

52. With full knowledge of Grassi's stock transfer to CEC, Campbell (personally and as Campbell Technologies' representative) ratified the transfer by encouraging CEC's continued investment in Alotech to fund the development of the Ablation Technology.

53. Defendants should therefore be required to specifically perform the ownership transfer of Grassi's ownership units to CEC.

**Count V – Restitution**  
**(Against All Defendants)**

54. The allegations contained in Paragraphs 1 through 51 are incorporated herein by reference.

55. If it is determined that CEC is not a majority shareholder of Alotech, CEC should be refunded the more than \$750,000 it invested in Alotech as working capital for the development of the Ablation Technology, plus any other costs or expenses.

**Count V – Injunctive Relief**  
**(Against All Defendants)**

56. The allegations contained in Paragraphs 1 through 55 are incorporated herein by reference.

57. CEC is likely to prevail upon the merits of this action and thus have determination made on the merits that it is the majority shareholder of Alotech (and thus permitted input regarding the use of the Ablation



Technology), that its more than \$750,000 of funding went for the development of the Ablation Technology, and thus entitled to ownership rights in the Ablation Technology.

58. The harm that CEC would suffer if Alotech transferred away its key assets, namely the patent applications dealing with the Ablation Technology, which could never be regained again far out weighs any prospective harm that Alotech would suffer if this Court was to enjoin any such transfer.

59. Public policy favors the insurance of injunctive relief in order to preserve the status quo until this matter can be resolved on the merits.

60. Temporary and preliminary injunctive relief should therefore issue enjoying Defendants, and all those in active concert with them, from transferring any patent, patent application, or other unregistered technology to any third-party.

#### **Jury Trial Demanded**

61. CEC exercises its Seventh Amendment right of trial by jury.

#### **Prayer For Relief**

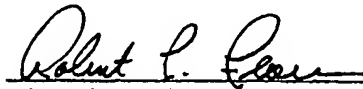
Wherefore, CEC prays for a jury trial on all issues so triable and for the following relief:

- 1) That this Verified Complaint be treated as an Affidavit.

- 2) That a Temporary Restraining Order, Preliminary and Permanent Injunction issue enjoining Defendants, and all those in active concert with them, transferring any patent, patent application, or other unregistered technology to any third-party.
- 3) That judgment be entered requiring Defendants' specific performance by transferring Grassi's fifty-one percent ownership in Alotech to CEC, and Alotech's recording of this transfer in its ledger.
- 4) Alternatively:
  - a) that CEC be granted restitution and Alotech be required to return the \$750,000 that CEC invested in Alotech to fund the development of the Ablation Technology; and
  - b) that CEC be awarded its monetary damages that it has suffered as a direct result of Defendants' fraud.
- 5) That judgment be entered against all Defendants, jointly and severally, for the damage they have caused CEC in an amount not yet fully determined, but in any event at least \$750,000;
- 6) That judgment be entered against all Defendants, jointly and severally, for exemplary damages in an amount determined by the jury sufficient to punish Defendants for their conduct; and
- 7) For such other relief as the Court deems just and proper.

This 27 day of December, 2004.

Respectfully submitted,



Timothy H. Kratz

Ga. Bar No. 429287

Luke Anderson

Ga. Bar No. 018330

John A. Lockett III

Ga. Bar No. 455549

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Ga. Bar No. 265005

**McGuireWoods LLP**

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Atlanta, Georgia 30309-7649

Telephone 404.443.5500

Facsimile 404.443.5599

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the within and foregoing  
**AMENDED COMPLAINT FOR DAMAGES, SPECIFIC  
PERFORMANCE, AND INJUNCTIVE RELIEF** by delivering a copy  
via U.S. Mail to their last known address as follows:

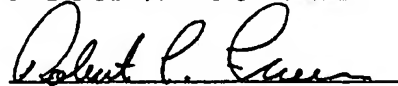
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191 Peachtree Street  
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Nisbet S. Kendrick III  
Womble Carlyle Sandridge & Rice PLLC  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309

This 27 day of December, 2004.

**MCGUIREWOODS LLP**



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VCOM466356.1

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING  
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

ALOTECH, LTD., JOHN GRASSI, JOHN  
CAMPBELL, and CAMPBELL  
TECHNOLOGY, LTD.,

Defendants/Counter-Plaintiffs,

v.

WOMBLE, CARLYLE, SANDRIDGE &  
RICE, PLLC,

Additional Counter-Defendant.

CIVIL ACTION NO. 04-1-01071

Jury Trial Requested

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**FIRST AMENDED VERIFIED COUNTERCLAIMS AGAINST  
CONSOLIDATED ENGINEERING COMPANY, INC.  
AND WOMBLE, CARLYLE, SANDRIDGE & RICE, PLLC**

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NOW COME Defendants/Counter-Plaintiffs, Alotech Ltd. ("Alotech"), John Grassi, Dr. John Campbell, and Campbell Technology, Ltd. (collectively, "Counter-Plaintiffs") and make and file their First Amended Verified Counterclaims against Counter-Defendants Consolidated Engineering Company, Inc. ("CEC") and Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"), and in support thereof respectfully show the Court as follows:

### Nature of Action

1. This is an action by Counter-Plaintiffs against CEC and WCSR. This action arises out of CEC's and WCSR's systematic and tortious breaches of their confidentiality and ethical obligations to Counter-Plaintiffs. These breaches occurred as part of a larger scheme to, among other things, defraud Counter-Plaintiffs, tortiously interfere with Alotech's prospective business relations, and misappropriate Alotech's intellectual property related to Alotech's Ablation Technology, which is a revolutionary technology for casting high volume, heavy duty aluminum products, such as automotive wheels, engine blocks, and suspension parts.

2. CEC repeatedly and intentionally deceived Alotech regarding the various steps CEC was taking to misappropriate Alotech's Ablation Technology, including willfully violating the parties' Confidential Disclosure Agreement regarding Alotech's Ablation Technology. As part of this unlawful scheme, and apparently at CEC's request, WCSR defrauded Counter-Plaintiffs by inducing Alotech to enter into an attorney-client relationship with WCSR despite the existence of and without disclosing facts known to WCSR regarding conflicts of interest (including unwaivable conflicts of interest); by unilaterally terminating that relationship without explanation less than two months later after Alotech disclosed to WCSR its confidential information relating to Alotech's Ablation Technology; and by then taking the confidential information previously disclosed by Alotech and knowingly and admittedly using it (1) to file patent applications on behalf of CEC, WCSR's long-standing client, in express violation of WCSR's engagement letter with Alotech and the ethical and professional standards governing lawyer conduct and (2) to assist CEC in drafting and negotiating agreements between Alotech and CEC relating to Alotech's confidential

information. As set forth in detail herein, CEC and WCSR then embarked upon a course of conduct to cover up and then launder these unlawful actions so that WCSR's long-standing client, CEC, could capitalize on Alotech's technology. This course of conduct included the filing of a sham, tactical lawsuit by CEC against Alotech designed to coerce Alotech into a quick relinquishment of all of Alotech's rights against both CEC and WCSR, followed by the immediate "settlement demand" by CEC that Alotech release all claims against WCSR relating to the foregoing conduct -- i.e., claims that have nothing to do with any of the allegations in CEC's sham lawsuit. Counter-Plaintiffs seek damages, disgorgement of profits, attorneys' fees, and punitive damages in this lawsuit.

**Parties, Jurisdiction and Venue**

3. Alotech is an Ohio limited liability company. Alotech is in the business of developing innovative processes to cast and/or forge aluminum alloys into high-volume, heavy duty products used every day, such as automotive wheels, engine blocks, and suspension parts.

4. John Grassi is a Georgia resident. Mr. Grassi is the President of Alotech and an Alotech shareholder.

5. John Campbell is a resident of West Malvern in the United Kingdom. Dr. Campbell is the Vice President of Alotech and an Alotech shareholder.

6. Campbell Technology, Ltd. is a United Kingdom company of Dr. Campbell, the sole proprietor.

7. CEC is a Georgia company with its worldwide and U.S. headquarters located in Kennesaw, Georgia and can be served at 1971 McCollum Parkway NW, Kennesaw, Georgia 30144. CEC is in the business of manufacturing furnaces used in connection with



the casting and forging of aluminum. CEC sells its furnaces, for example, to auto manufacturers for approximately \$15-\$18 million each.

8. This Court has personal jurisdiction over CEC because it is a resident of Georgia.

9. WCSR is a foreign professional limited liability company that is registered to transact business in Georgia, and can be served at 1201 West Peachtree Street NW, Suite 3500, Atlanta, Georgia 30309. WCSR is one of the hundred largest law firms in the United States and has offices in nine cities, including Atlanta, Georgia.

10. This Court has personal jurisdiction over WCSR because it is registered to transact business in Georgia.

11. Venue is proper in this Court for Counter-Defendants pursuant to Ga. Const. art. 6, § 2, ¶ 4, and O.C.G.A. §§ 14-2-510, 9-10-31 and 9-10-93.

### **BACKGROUND FACTS**

#### **Alotech's Technology**

12. Counter-Plaintiff John Campbell, one of the principals of Alotech, is one of the most respected physicists in the aluminum casting industry. Dr. Campbell is a professor at the University of Birmingham in England and previously led the team that designed the process through which the "Cosworth engine" is produced, which has resulted in hundreds of millions of dollars in revenue for the Cosworth Company and Ford Motor Company during the last twenty years.

13. Counter-Plaintiff John Grassi, the other principal of Alotech, is also a well-known metallurgical engineer in the aluminum casting industry. Mr. Grassi began his career

as an engineer working for Alcoa, and reached the position of Manager of Development, Technologies and Implementation for Alcoa.

14. Counter-Plaintiffs developed a technology known as "Ablation Technology," the rights to which are owned by Alotech.

15. Alotech's Ablation Technology represents a revolutionary advance over pre-existing, conventional aluminum casting technology. Using pre-existing, conventional casting technology – such as the technology upon which Counter-Defendant CEC's business depends – it generally takes several hours to create an aluminum part. Comparatively, it takes only minutes to create the same aluminum part using the Ablation Technology, and the resulting product is stronger than products cast using the pre-existing, conventional casting technology. Alotech's technology has broad-based application that could completely revamp the aluminum casting industry, and, at the same time, eventually render obsolete the technology used by companies like Counter-Defendant CEC.

#### **The Alotech – CEC Business Venture**

16. As part of pursuing a business relationship with CEC, in December 2002 Alotech disclosed the details of the Ablation Technology to CEC pursuant to the terms of a Confidential Disclosure Agreement (the "CDA," attached hereto as Exhibit "A") entered between Alotech and CEC on December 13, 2002.

17. CEC reacted very positively to Alotech's Ablation Technology and enthusiastically and aggressively agreed to pursue a business venture with Alotech in order to commercialize and exploit the Ablation Technology.

18. CEC's reaction was not surprising because CEC's business was built on conventional casting and thermal treatment technology that could be rendered obsolete by

Alotech's Ablation Technology. In other words, the furnaces which are at the core of CEC's business would no longer be a necessary component in the casting of high volume, heavy-duty aluminum parts if Alotech's Ablation Technology were adopted by the aluminum casting industry.

19. Thereafter, Alotech and CEC began working together to commercialize Alotech's Ablation Technology. The parties agreed to the general parameters of a business relationship through which CEC would provide funding for the commercial exploitation of Alotech's Ablation Technology and CEC would receive revenues on a per-product basis in return for its investment in the business relationship.

20. At CEC's urging, Alotech relocated its operations and shipped two 18-wheeler loads of equipment from Cleveland, Ohio to Atlanta, Georgia in January 2003.

21. Thereafter, in February 2003, the parties began negotiating a formalized joint venture.

#### The WCSR Engagement

22. Alotech had always used Fay, Sharpe, Fagan, Minnich & McKee, LLP, a law firm in Cleveland, Ohio, for its intellectual property work.

23. CEC informed Alotech in or around late March or early April 2003 that unless Alotech permitted the law firm WCSR – CEC's long-standing counsel – to represent CEC in negotiations with Alotech for purposes of culminating a formalized joint venture *and* permitted WCSR to represent *both* CEC *and* Alotech regarding the intellectual property contributed by Alotech to the venture, CEC would stop providing funding to the venture, notwithstanding CEC's previous agreement to fund the venture and Counter-Plaintiffs' reliance on those agreements in relocating its operations to Kennesaw, Georgia.

24. Specifically, Scott Crafton, currently CEC's Chief Executive Officer, represented that CEC was investing money into the development of the Ablation Technology, and that he would not feel comfortable unless Louis Isaf of WCSR took control of protecting the intellectual property related to the Ablation Technology. Mr. Crafton indicated that CEC had always used WCSR for its legal representation and stated that CEC does not do anything without Mr. Isaf's involvement.

25. Neither WCSR nor CEC disclosed to Counter-Plaintiffs any of the facts known to WCSR and CEC that created a number of unwaivable conflicts of interest between CEC and Alotech, including WCSR's representation of CEC in connection with the provisional application from which United States Patent Application No. 10/616,750 claims priority, WCSR's representation of CEC in connection with advice relating to the document attached to CEC's Verified Complaint as Exhibit "C," and WCSR's representation of CEC in connection with methods through which CEC could secure the Ablation Technology for itself.

26. Without knowledge of any of these facts, Alotech reluctantly agreed to CEC's demand, noting the prospect that WCSR could be disqualified from representing CEC in the future if a conflict arose between CEC and Alotech.

27. On April 16, 2003, Alotech and CEC executed an engagement letter with WCSR. (See April 16 letter from WCSR to Alotech and CEC, attached hereto as Exhibit "B," and referred to hereinafter as the "Engagement Letter"). Consistent with the Georgia Rules of Professional Conduct that govern WCSR's conduct, WCSR, CEC, and Alotech agreed that in the event a conflict ever arose between Alotech and CEC regarding either the Alotech intellectual property (referred to as the "Subject Inventions" in WCSR's

Engagement Letter) or the terms of the joint venture being negotiated (referred to as the "Business Venture" in WCSR's Engagement Letter), then WCSR would not represent either Alotech or CEC. Specifically, WCSR's Engagement Letter stated:

To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

(Engagement Letter at 2-3, attached hereto as Exhibit "B").

28. As dictated by the CDA, all parties – including WCSR, CEC, and Alotech – understood at all points in time that all intellectual property related to the Ablation Technology and all improvements to the Ablation Technology belonged to Alotech alone and would be licensed by Alotech to the joint venture. (See CDA at 2, attached hereto as Exhibit "A"). WCSR even acknowledged the CDA signed between Alotech and CEC in its Engagement Letter with Alotech. (Engagement Letter at 1).

#### **Disclosure of the Ablation Technology to WCSR**

29. With the Engagement Letter and CDA in place, Alotech agreed to disclose the Ablation Technology to WCSR so that WCSR could assist Alotech with protecting its intellectual property rights, and thereby benefit the joint venture between Alotech and CEC.

30. During the course of WCSR's brief representation of Alotech, Alotech disclosed the general and fundamental details of the Ablation Technology to WCSR at a meeting on May 1, 2003, which was arranged by CEC's General Counsel.

31. The morning before this May 1 meeting, CEC's General Counsel circulated a list to WCSR (as well as Mr. Grassi, Dr. Campbell, and Jay Moldovanyi, Alotech's intellectual property counsel in Ohio) that identified twenty-eight (28) discrete inventions Alotech owned in connection with Alotech's Ablation Technology and specifying the particular type of protection (i.e., patent protection or trade secret protection) that Alotech wished to pursue for each of these discrete inventions.

32. The May 1 meeting was at CEC's office. Two WCSR patent attorneys and three Alotech scientists (including Mr. Grassi and Dr. Campbell) were present. Towards the end of the meeting, Jay Moldovanyi, Alotech's intellectual property counsel in Ohio, joined this meeting by teleconference.

33. Alotech demonstrated the Ablation Technology at the May 1 meeting and disclosed many confidential and fundamental details of the Ablation Technology to WCSR. WCSR made an audiotape recording of this meeting.

#### The WCSR Withdrawal

34. Within weeks of the May 1 invention disclosure meeting, WCSR informed Alotech – in absolute contradiction of its Engagement Letter – that it was withdrawing from its representation of Alotech but that it would continue to represent CEC in all matters, including in connection with the Alotech intellectual property (the "Subject Inventions") and in connection with the joint venture being negotiated between Alotech and CEC (the "Business Venture"). CEC and WCSR went so far as to present Alotech with a letter in mid-May in which Alotech would have waived any conflicts arising from such continued representation of CEC.

35. When Alotech refused to sign this letter, WCSR sent Alotech a withdrawal letter dated May 27, 2003 and delivered in June 2003 attempting to unilaterally dictate the terms of such a waiver. (See May 27, 2003 Letter from WCSR to CEC and Alotech, attached hereto as Exhibit "C" and hereinafter referred to as the "Withdrawal Letter"). This letter stated that WCSR would continue to represent CEC regarding the Business Venture and would continue to represent CEC regarding the Ablation Technology:

In light of the unrelated, limited nature of our prior representation of Alotech (i.e., with respect only to the Applications), we reserve the right to continue our representation of CEC in all matters, including but not limited to matters relating to any Business Venture that may be formed by the parties. Without limiting the scope of our representation of CEC, we note that, at the request of CEC and acting on CEC's behalf, we will continue to assist CEC with (i) the analysis of Subject Inventions, (ii) the preparation and review of patent applications for Subject Inventions, and (iii) the prosecution of such applications, but always and only as CEC's representative.

(Id. at 2).

36. WCSR provided no reason for this abrupt withdrawal at the time, and it still to this day has provided no reason for its withdrawal.

37. Alotech never signed any waiver or otherwise consented to WCSR's continued representation of CEC. At all times, Alotech maintained its objection to the terms of WCSR's withdrawal and to WCSR continuing to represent CEC in connection with any intellectual property work related in any way to Alotech's technology or in connection with the Business Venture.

38. Despite Alotech's repeated and unequivocal objections to the terms that WCSR attempted to foist upon Alotech, WCSR continued with its representation of CEC, apparently believing that Alotech could never do anything about it.

### **The Prospect of the Hydro Aluminum Deal**

39. Around the same time that WCSR purportedly withdrew from representing Alotech, Alotech and CEC were negotiating a deal between their business venture and Hydro Aluminum Deutschland GmbH ("Hydro Aluminum") regarding a license for Alotech's Ablation Technology.

40. The negotiations resulted in the signing of a Letter of Intent between Hydro Aluminum on the one hand and the Alotech/CEC business venture on the other. Additionally, in order to facilitate the Letter of Intent, Alotech and CEC previously had entered into a Product Marketing Distribution License Agreement ("License Agreement") for the purposes of licensing Alotech's Ablation Technology to Hydro Aluminum. The License Agreement was entered into on June 12, 2003, and it reflected the general structure of the then-contemplated venture between Alotech and CEC.

41. Alotech and CEC estimated that the Hydro Aluminum deal would generate \$4 million of up-front fees and \$35 million over the course of five years.

### **CEC and WCSR Misappropriate Alotech's Ablation Technology**

42. In the weeks following WCSR's May 27 unilateral Withdrawal Letter, WCSR continued its representation of its long-standing client, CEC, and knowingly, willfully, and wrongfully aided and abetted CEC in its misappropriation of Alotech's proprietary technology.

43. In violation of the Engagement Letter with Alotech, on June 11, 2003, WCSR sent a letter to Alotech's Ohio counsel reiterating that WCSR would continue to be involved in representing CEC in legal and patent matters in connection with "the joint project being engaged in by CEC and Alotech." (See June 11, 2003 Letter from Lou Isaf to Jay



Moldovanyi, attached hereto as Exhibit "D" and hereinafter referred to as the "June 11 Letter," at 2).

44. Likewise, CEC continued to provide WCSR with Alotech's confidential information relating to the Ablation Technology, including a draft Alotech patent application by correspondence dated June 30, 2003 (which Alotech did not learn of until over a year later).

45. In late June and early July, Alotech demanded the right to inspect all CEC patent files that could conflict with or otherwise compete with Alotech's technology. In response to Alotech's request, CEC/WCSR provided Alotech with a list of non-relevant patents, thereby misleading Alotech and its Ohio counsel into believing that there was no conflict between the parties. What CEC/WCSR failed to disclose was that it was in the process of filing or had just filed patent applications on Alotech's technology that had been disclosed pursuant to the CDA and that fell squarely within the definition of the "Subject Inventions" in the Engagement Letter.

#### **The July 10, 2003 Patent Application**

46. Specifically, on July 10, 2003, CEC and WCSR misappropriated Alotech's Ablation Technology by taking the confidential information WCSR obtained in the May 1 meeting with Alotech and using it to file a patent application on behalf of CEC for what CEC dubbed its "Clean Cast" technology. This patent application discloses part of the substance of the confidential information regarding the Ablation Technology that Alotech had disclosed to WCSR during the May 1 meeting at CEC, and included new claims that appear to have been drafted specifically to cover Ablation Technology. CEC referred to this patent application as its "Clean Cast" patent, but whatever the "Clean Cast" rubric is meant to

convey, the application is unambiguously directed at the confidential information that Alotech disclosed to CEC under the terms of the CDA and to WCSR under the terms of the Engagement Letter.

47. Neither CEC nor WCSR made any disclosure at this time to Alotech of the filing of the July 10, 2003 patent application. Likewise, the July 10, 2003 patent application was not included on the list of patents that CEC/WCSR provided to Alotech in response to Alotech's demand to inspect all CEC patent files that could conflict with or otherwise compete with Alotech's technology.

48. Then, in August 2003, negotiations regarding the joint venture further unraveled between CEC and Alotech. On September 3, 2003, during a conversation between John Grassi (Alotech's president) and CEC's president regarding the relationship between Alotech and CEC, CEC's president mentioned CEC's "Clean Cast" patent application for the first time. Mr. Grassi demanded to know what was in this application, but CEC's president refused to provide any details at that time.

#### **The September 4, 2003 Patent Application**

49. On September 4, 2003, just one day after CEC disclosed the existence of the so-called "Clean Cast" patent application to Mr. Grassi, but refused to provide any information about it, WCSR once again breached the Engagement Letter by filing yet another new patent application at CEC's direction on one of the core aspects of the Ablation Technology.

50. Specifically, on September 4, 2003, WCSR – at CEC's instruction – filed a provisional patent application regarding a key element of the Ablation Technology: the chemical binder that holds the sand mold together and makes the Ablation Technology

feasible. This technology was disclosed to WCSR and CEC pursuant to the terms of the CDA and falls within the ambit of the "Subject Inventions" referenced in WCSR's Engagement Letter.

51. There can be no doubt that CEC, with the assistance of WCSR, was attempting to steal Alotech's Ablation Technology: CEC/WCSR named John Grassi (Alotech's president) as the inventor of the technology described therein, but did not disclose to Alotech or John Grassi the existence of the application or the desire to file it. This application was, in fact, drafted and filed without the knowledge of Alotech, without the permission or consent of Mr. Grassi (the named inventor), without consultation with or review of the application by Mr. Grassi, in express disregard of the obligations set forth in the Engagement Letter between WCSR and Alotech, in disregard of the duty of care owed to a former client to avoid conflicts of interest, and in violation of the ethical obligations that govern lawyer conduct.

52. Compounding the deliberate disregard of the rights of Alotech and Mr. Grassi and confirming the ill-conceived motives of CEC in having this application drafted and filed without the knowledge of Alotech or Mr. Grassi, Alotech had previously informed CEC and WCSR that Alotech did not intend to file a patent application for the chemical binder, but instead intended to treat and protect the chemical binder as a trade secret. WCSR's and CEC's knowledge of this is expressly confirmed by the schedule of Alotech technology circulated to WCSR by CEC's General Counsel in advance of the May 1 meeting in which the chemical binder aspect of the Ablation Technology is specifically identified as a "trade secret." CEC/WCSR nevertheless drafted and filed the application on precisely this subject matter.

53. This September 4, 2003 provisional patent application was filed by WCSR more than three (3) months after WCSR purportedly withdrew from representing Alotech.

54. Neither CEC nor WCSR disclosed this application to Alotech until over six months later when the undersigned counsel began representing Alotech. Instead, CEC and WCSR repeatedly misled Alotech regarding the patent filings made by WCSR on behalf of CEC.

55. Approximately one week after WCSR filed the September 4 patent application, CEC and WCSR finally gave to Alotech and Mr. Grassi a list of what it referred to as the "Clean Cast" patent applications. Remarkably, CEC and WCSR still did not disclose the provisional patent application that CEC now alleges was the basis for the July 10, 2003 patent application, and CEC and WCSR did not disclose anything about the September 4 filing. Instead, CEC disclosed select portions of files, with the apparent purpose and effect of concealing the extent of the actions taken by CEC, with the assistance of WCSR, to misappropriate and capitalize on Alotech's Ablation Technology.

#### **The Alotech – CEC Business Venture Collapses**

56. Over the next several months, Alotech (which had no idea about the filing of the September 4 application) continued to object to WCSR's continued representation of CEC, including the fact that the "Clean Cast" file disclosed to Alotech thus far – which, unbeknownst to Alotech, was not complete – appeared to contain information disclosed by Alotech to WCSR at the May 1 meeting.

57. During this time period, Alotech also learned that WCSR was involved on behalf of CEC with a write-up of the joint venture document still being negotiated between Alotech and CEC. This activity was also in flagrant violation of the Engagement Letter and

CEC's representations to Alotech that another law firm would represent CEC in such negotiations. This development led to the further unraveling of business negotiations between Alotech and CEC.

58. During this same time period, CEC did not complete its duties outlined in the Letter of Intent with Hydro Aluminum, and Hydro Aluminum walked away from the deal in October 2003. CEC's failure seemed inexplicable to Alotech at the time.

59. Alotech later learned from Hydro Aluminum that Hydro Aluminum also had proposed a modified deal in which only the chemical binder and mold making process used in connection with the Ablation Technology would be licensed to Hydro Aluminum. CEC unilaterally rejected this offer without consulting with Alotech or even disclosing the offer to Alotech. Upon learning of CEC's unilateral rejection of this offer, Alotech was at a loss to understand why CEC was opposed to a licensing deal worth millions of dollars to Alotech and CEC.

60. Half a year later, when WCSR finally disclosed the existence of the September 4 patent application it unlawfully filed at CEC's instruction, the pieces finally fit together. The subject matter of the modified deal proposed by Hydro Aluminum was the precise subject matter of the September 4 patent application that CEC and WCSR had filed, but also had not disclosed to Alotech. Apparently, CEC was intent on terminating all deals – even if it required the concealment and unilateral rejection of offers – until CEC completed its plan to misappropriate Alotech's technology, at which point it could cut out Alotech completely.

61. When Hydro Aluminum walked away from its Letter of Intent with Alotech/CEC, and when CEC rejected any modified deal proposed by Hydro Aluminum, the

basis for the business venture between CEC and Alotech contemplated in June 2003 was effectively terminated.

62. Shortly after the termination of the Hydro Aluminum deal, CEC's president told Mr. Grassi (Alotech's president) that unless Alotech either agreed to a cross-license of technology or agreed to the terms of the proposed joint venture drafted with WCSR's assistance, CEC would sue Alotech in connection with the failed joint venture between Alotech and CEC. CEC did not suggest any basis for such a lawsuit. Instead, CEC's message was that Alotech either had to capitulate to CEC's unlawful demands, or CEC would bury Alotech with legal expenses that it thought Alotech could not afford to pay.

63. Wanting to avoid needless litigation and still hoping to salvage the relationship, Alotech began negotiating a cross-license. CEC immediately demanded, however, that a condition of entering into a cross-license (and avoiding a meritless lawsuit) was that Alotech must waive all claims against WCSR – many of which related to wrongdoing that *neither CEC nor WCSR had yet disclosed to Alotech* – so that WCSR could draft the cross-license. On January 23, during a conversation between Mr. Grassi and CEC's General Counsel, CEC's General Counsel stated that a waiver of all claims against WCSR and permission for WCSR to draft the cross-license were necessary to enter into any cross-license (which CEC had made clear was the only way to avoid the filing of a baseless lawsuit by CEC) because CEC's co-president would not act without the counsel of WCSR's Louis Isaf.

64. The net effect of such a waiver would be a free pass for WCSR to continue to draft and file patent applications for CEC covering the Ablation Technology, coupled with Alotech's permission for WCSR (with knowledge of Alotech's confidential information) to

use that confidential information against Alotech in drafting a cross-license. Accordingly, CEC communicated unambiguously that the price for avoiding the sham lawsuit threatened by CEC was that Alotech effectively would have to grant permission for WCSR to draft the terms of the cross-license on behalf of CEC and file applications on Alotech's technology on behalf of CEC – and thus, the plan to usurp Alotech's technology would be complete. Alotech refused to grant any such permission or blanket waiver.

65. When Alotech refused to comply with this demand, and as CEC became increasingly desperate to cover its tracks, CEC retained the law firm of McGuireWoods for assistance. Specifically, on January 29, 2004, Fred Isaf – a partner in the Atlanta office of the law firm McGuireWoods and the brother of WCSR's Louis Isaf – sent a letter to Alotech stating that McGuireWoods now represented CEC in connection with the Business Venture issues between CEC and Alotech.

66. On or about January 30, 2004, Alotech sent a letter to WCSR (also bearing a date of January 6, 2004) outlining the various breaches of WCSR's ethical obligations that WCSR had committed on behalf of CEC of which Alotech was aware.

67. Approximately two weeks later, McGuireWoods filed the threatened lawsuit on behalf of CEC against Alotech and Alotech's owners in what appears to have been a tactical maneuver to force a financially strapped company (Alotech) to capitulate under the strain of litigation to release its claims against CEC and WCSR and to turn over all rights in the Ablation Technology and related intellectual property.

68. At the time that the lawsuit was filed, Alotech believed that it still was in negotiations with CEC for a cross-license of technology in an effort to resolve the issues

between them. The lawsuit was triggered, however, by Alotech's articulation of WCSR's wrongdoing.

69. The goal of the lawsuit became immediately apparent, as CEC made an immediate, unsolicited settlement offer to Dr. Campbell's personal attorney in England. This "settlement offer" would require that Alotech cross-license all of its technology to CEC and that Alotech waive all claims against WCSR, i.e., claims that had nothing to do with any of the allegations set forth in the sham Complaint filed on behalf of CEC by McGuireWoods and many of which related to wrongdoing that had not yet even been disclosed to Alotech. Alotech rejected this attempt to steamroll Alotech and its owners into foregoing their intellectual property rights.

70. Only when the undersigned counsel later appeared on behalf of Alotech did WCSR and CEC begin to disclose the full extent of the wrongful conduct that had occurred over the course of the last year. On March 11, 2004, the undersigned counsel left a voice message for CEC's counsel at McGuireWoods informing CEC's counsel that the law firm of Duane Morris would be representing Alotech, Mr. Grassi, Dr. Campbell, and Campbell Technology, Ltd. in the lawsuit and asking for an extension of time to answer the Complaint.

71. Later that same day, the loss prevention partner at WCSR's Atlanta office sent what appears to have been a hastily-drafted letter to Mr. Grassi. (See March 11, 2004 Letter from WCSR to Allotech [sic], attached hereto as Exhibit "E"). This letter discloses, for the first time, that on September 4, 2003, WCSR filed the patent application described above at CEC's instruction, naming John Grassi as the inventor. This letter also purported to attach a copy of the referenced application, even though it did not and even though the author of the letter later admitted he had not even undertaken a search to locate a copy of that application



at the time he had sent the letter. The letter further asserts that an additional copy of the application would be forwarded to Alotech's counsel in Ohio (which never occurred).

#### **Alotech's Lost Opportunities**

72. Throughout the course of its dealing with CEC and WCSR, Alotech, along with CEC, had been involved in negotiations regarding proposed deals with a number of companies seeking to license and/or exploit the Ablation Technology for use in connection with the manufacturing of high volume, heavy duty aluminum parts. Each of these potential deals would produce revenues to Alotech of at least tens of millions of dollars over a period of years.

73. Since Fall 2003, Alotech on its own has engaged in detailed negotiations with a number of companies regarding the use of Alotech's Ablation Technology to produce high volume, heavy duty aluminum parts. These companies include Alcoa; HA International, LLC; Park Ohio/General Aluminum; and Hydro Aluminum. Each of these potential deals would produce revenues to Alotech of at least tens of millions of dollars over a period of years.

74. As a result of the course of conduct set forth above, almost all such deals have come to a halt due to the ongoing dispute arising from CEC's and WCSR's misconduct and the cloud of uncertainty created by the attempted misappropriation of Alotech's technology.

75. Indeed, CEC's Complaint acknowledges the one-time potential of a deal between Alcoa and Alotech, and confirms that CEC's intent in filing the lawsuit was to terminate that deal.

76. CEC's specific intent to interfere with Alotech's business relationships was made clear in conversations with John Grassi on January 23, 2004. In one of those

conversations, Mr. Grassi discussed WCSR's wrongdoing regarding the "Clean Cast" patent applications with CEC's General Counsel (at that point, Alotech did not yet know of the September 4 patent application actually identifying Mr. Grassi as the inventor or the full scope of CEC's and WCSR's wrongful activity regarding the "Clean Cast" patents). CEC's General Counsel responded that it would be a litigation question as to whether the "Clean Cast" patents were based on CEC's technology or Alotech's technology, and that the prospect of such a battle would be enough to prevent Alcoa from engaging in any transaction with Alotech.

77. Upon information and belief, CEC intended to interfere with the Alotech/Alcoa negotiations by filing its Complaint against Alotech.

78. Additionally, despite repeated demands by Alotech, CEC did not return Alotech's equipment that was moved from Ohio to CEC's facilities in Kennesaw, Georgia in January 2003 (the "Converted Equipment") until August 16, 2004.

79. Alotech's repeated demands that CEC return the Converted Equipment were made in writing, and CEC failed to provide an adequate response and demanded cash payments for the return of equipment belonging to Alotech.

80. Alotech repeatedly informed CEC that its refusal to return the Converted Equipment interfered with Alotech's ability to demonstrate the Ablation Technology and, therefore, that CEC was compounding Alotech's loss of business opportunities.

81. Alotech also informed CEC that several pieces of the equipment are owned by third parties that have demanded the return of the equipment.

82. Nevertheless, CEC refused to return the Converted Equipment until August 16, 2004.

83. As a result of CEC's and WCSR's tortious conduct, and as set forth in detail herein, Alotech seeks monetary and injunctive relief based on a number of causes of action including: fraud; tortious interference with business relations and prospective business relations; misappropriation of trade secrets and confidential information; breach of fiduciary duties; breach of the Confidential Disclosure Agreement; breach of the duty of good faith and fair dealing; professional malpractice; breach of the Engagement Letter; conversion; and conspiracy.

**Count I**  
**Fraud (Against CEC)**

84. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 83 of their Counterclaims as if set forth fully herein.

85. CEC fraudulently and intentionally concealed from or misrepresented to Counter-Plaintiffs material facts with the intent of (a) misappropriating Alotech's intellectual property rights in the Ablation Technology; (b) resolving WCSR's liability for its tortious misconduct against Alotech without Alotech being fully informed of the actions that WCSR had taken on behalf of CEC to the detriment of Alotech; (c) permitting this misconduct to continue, thereby effectively stripping Alotech of its intellectual property rights in the Ablation Technology; and (d) withholding critical information from Alotech about the status of certain patent filings that were material to business decisions Alotech needed to make and would have materially impacted Alotech's negotiations with third parties.

86. The material facts fraudulently concealed or misrepresented by CEC, as set forth with more specificity above, include but are not limited to the following:

(a) CEC's desire to use WCSR to misappropriate Alotech's intellectual property rights in the Ablation Technology;

(b) the drafting and filing of the July 10, 2003 patent application which misappropriates certain confidential information of Alotech;

(c) the drafting and filing of the of the September 4, 2003 provisional patent application regarding Alotech's Ablation Technology;

(d) WCSR's continued representation of CEC in the negotiations of certain contracts between and among CEC, Alotech, and third parties;

(e) the facts surrounding CEC's efforts to procure a waiver from Alotech with the intent of absolving itself and WCSR from liability for its past and future actions of assisting CEC with its misappropriation of Alotech's intellectual property; and

(f) CEC's general course of conduct in withholding material information about CEC's actions and intent with respect to Alotech's Ablation Technology while at the same time leading Alotech to believe the parties were in a partnering relationship that would ultimately result in a joint venture.

87. These material facts were intentionally and knowingly concealed or misrepresented by CEC. This was compounded by CEC's selective disclosure of related information, designed to hide and conceal the material facts set forth above.

88. Based on Counter-Plaintiff's relationships with CEC, the communications it had with CEC and its agreements with CEC, Counter-Plaintiffs had a justifiable basis for believing that CEC was disclosing to Counter-Plaintiffs all material facts regarding issues related to the CEC/Alotech business venture and Alotech's intellectual property rights, and

Counter-Plaintiffs had no reason to believe that CEC would fraudulently conceal material facts from Counter-Plaintiffs.

89. Counter-Plaintiffs relied on CEC's fraudulent omissions and misrepresentations by, among other things, foregoing other possible joint venture relationships in December 2002/January 2003, disclosing confidential information to CEC and WCSR, continuing to engage in a business relationship with CEC, and relying on CEC in negotiating with third parties for the exploitation of the Ablation Technology.

90. As a consequence of the foregoing, Counter-Plaintiffs have been damaged and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count II**  
**Fraud (Against WCSR)**

91. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 90 of their Counterclaims as if set forth fully herein.

92. WCSR fraudulently and intentionally concealed from or misrepresented to Counter-Plaintiffs material facts known to WCSR with the intent of (a) assisting CEC in the misappropriation of Alotech's intellectual property rights in the Ablation Technology; and (b) resolving WCSR's own liability for its tortious misconduct against Alotech and effectively stripping Alotech of its intellectual property rights in the Ablation Technology, all in favor of CEC, WCSR's longstanding client.

93. As set forth with more specificity above, WCSR took at least the following actions while fraudulently and intentionally concealing or misrepresenting materials facts related to such actions:

(a) taking on the attorney-client relationship with Alotech without disclosing to Counter-Plaintiffs all facts known to WCSR that created unwaivable conflicts, including WCSR's representation of CEC in connection with the provisional application from which United States Patent Application No. 10/616,750 claims priority, WCSR's representation of CEC in connection with advice relating to the document attached to CEC's Verified Complaint as Exhibit "C," and WCSR's representation of CEC in connection with methods through which CEC could secure the Ablation Technology for itself;

(b) taking on the attorney-client relationship with Alotech without first disclosing to Alotech all facts known to WCSR that were necessary for Alotech to act with informed consent regarding the proposed representation;

(c) continuing to represent CEC in connection with the drafting of technology licenses with Alotech and other aspects of CEC's business relationship with Alotech, and in connection with WCSR's prosecution of patent applications on behalf of CEC, despite being prohibited from doing so by the ethical and professional standards governing lawyer conduct and the Engagement Letter (which was itself procured and executed in violation of the ethical and professional standards governing lawyer conduct) and without disclosing these facts to Alotech;

(d) filing United States Patent Application No. 10/616,750 on behalf of CEC on July 10, 2003 without Counter-Plaintiffs' knowledge or consent;

(e) filing United States Patent Application No. 10/616,750 at CEC's direction without Counter-Plaintiffs' knowledge or consent;

(f) filing United States Patent Application No. 10/636,367 at CEC's direction without Counter-Plaintiffs' knowledge or consent;

(g) referring CEC to the brother of the lead lawyer servicing CEC for WCSR for purposes of:

(i) assisting CEC with making false allegations in a sham lawsuit against Counter-Plaintiffs in continuation of its fraudulent scheme and

(ii) coercing a release of WCSR that would absolve WCSR from liability for the wrongful actions described above and permit such activity to continue; and

(h) concealing from Counter-Plaintiffs information related to:

(i) the facts and motive behind the unexplained unilateral withdrawal from the representation of Alotech;

(ii) WCSR's filing of the July 10, 2003 patent application on CEC's behalf and at CEC's direction which misappropriates certain confidential information of Alotech;

(iii) WCSR's filing (at the direction of CEC) of the September 4, 2003 provisional patent application regarding Alotech's Ablation Technology;

(iv) WCSR's continued representation of CEC in the drafting of technology licenses with Alotech and other aspects of CEC's business relationship with Alotech; and

(v) the facts surrounding WCSR's and CEC's efforts to procure a waiver from Alotech with the intent of absolving themselves from liability for the wrongful actions described above and permitting such activity to continue.

94. Based on Alotech's relationship with WCSR, the communications it had with WCSR and its agreements with WCSR, Counter-Plaintiffs had a justifiable basis for believing, and in fact relied on the belief, that WCSR would not take these actions, would disclose any such material facts to Counter-Plaintiffs, and would not take any actions inconsistent with its obligations to Alotech arising from the attorney-client relationship and the ethical and professional standards governing lawyer conduct.

95. Counter-Plaintiffs relied on WCSR's fraudulent omissions and misrepresentations by, among other things, entering into an attorney-client relationship with WCSR and disclosing Alotech's confidential information to WCSR.

96. As a consequence of the foregoing, Counter-Plaintiffs have been damaged and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count III**  
**Tortious Interference with Business Relations and Potential Business Relations**  
**(Against CEC)**

97. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 96 of their Counterclaims as if set forth fully herein.

98. CEC has engaged in improper and wrongful conduct with the intent of interfering with Alotech's business relationships and potential business relations with third parties.

99. CEC's improper and wrongful conduct includes but is not limited to: (a) misappropriating and/or attempting to misappropriate Alotech's intellectual property in order to create a cloud of uncertainty as to Alotech's ownership of its intellectual property; (b) filing a frivolous bad faith Complaint against Counter-Plaintiffs which includes spurious and



unsubstantiated claims for the purpose of securing a waiver of past and future wrongdoing by CEC and WCSR, with the additional intent and effect of disparaging Counter-Plaintiffs in the marketplace and discouraging third parties from continuing to do business with Counter-Plaintiffs; and (c) refusing to return certain equipment owned by Alotech and by third parties with which Alotech has done business, with the intent of preventing Alotech from demonstrating the Ablation Technology to Alotech's prospective business partners and creating discord between Alotech and the third parties who have provided equipment to Alotech.

100. CEC has acted purposely, maliciously and, without privilege with the intent to injure Counter-Plaintiffs.

101. CEC's misconduct has directly caused third parties including but not limited to, Alcoa, HA International, LLC, Park Ohio/General Aluminum and Hydro Aluminum, among others, to discontinue or fail to enter into anticipated and potential business relationships with Alotech.

102. As a direct and proximate result of CEC's unlawful acts, Counter-Plaintiffs have suffered and will continue to suffer irreparable damage.

103. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count IV**  
**Misappropriation of Trade Secrets and Confidential Information**  
**(Against CEC)**

104. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 103 of their Counterclaims as if set forth fully herein.

105. Pursuant to the terms of the CDA, Alotech disclosed to CEC certain of its trade secrets and confidential information regarding its Ablation Technology.

106. At the time of the disclosure, CEC was aware that Alotech's trade secrets and confidential information were confidential, were being disclosed pursuant to the terms of the CDA, and that it was prohibited from using or disclosing to third parties Alotech's trade secrets and confidential information without the prior authorization and approval of Alotech.

107. CEC obtained Alotech's trade secrets and confidential information under circumstances giving rise to a duty to maintain their secrecy or limit their use.

108. Subsequently, CEC used Alotech's trade secrets and confidential information to CEC's benefit and Alotech's detriment, and disclosed Alotech's trade secrets and confidential information to third parties including, but not limited to, the U.S. Patent and Trademark Office by filing or causing to be filed certain patent applications containing such trade secrets and confidential information.

109. CEC also used Alotech's trade secrets by attempting to assert ownership over them.

110. At the time CEC used Alotech's trade secrets and disclosed Alotech's trade secrets and confidential information to the U.S. Patent and Trademark Office, among others, it knew or had reason to know that the information being disclosed was Alotech's trade secret and confidential information.

111. CEC did not have Alotech's express or implied consent to use or disclose the trade secret or confidential information to third parties.

112. Alotech derived economic value from its trade secrets and confidential information not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

113. Alotech took reasonable efforts under the circumstances to maintain the secrecy of its trade secrets and confidential information through means, including but not limited to the use of confidential disclosure agreements.

114. As a consequence of the foregoing, Counter-Plaintiffs have been damaged by CEC's misappropriation of Alotech's trade secrets and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

#### Count V

#### **Misappropriation of Trade Secrets and Confidential Information (Against WCSR)**

115. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 114 of their Counterclaims as if set forth fully herein.

116. Pursuant to the terms of the Engagement Letter and the obligations arising from the relationship between Alotech and WCSR, Alotech disclosed to WCSR certain of its trade secrets and confidential information regarding its Ablation Technology.

117. At the time of the disclosure, WCSR was aware that Alotech's trade secrets and confidential information were confidential, were being disclosed pursuant to the terms of the Engagement Letter, and that WCSR was prohibited from using or disclosing to third parties Alotech's trade secrets and confidential information without the prior authorization and approval of Alotech.

118. WCSR obtained Alotech's trade secrets and confidential information under circumstances giving rise to a duty to maintain their secrecy or limit their use.

119. WCSR used and disclosed certain of Alotech's trade secrets and confidential information regarding the Ablation Technology to the benefit of its long standing client, CEC, by including such information in certain patent applications that it filed with the U.S. Patent and Trademark Office on CEC's behalf.

120. WCSR also disclosed certain of Alotech's trade secrets and confidential information to third parties, including but not limited to the U.S. Patent and Trademark Office, by filing or causing to be filed certain patent applications containing such trade secrets and confidential information.

121. At the time WCSR used Alotech's trade secrets and confidential information and disclosed the same to the U.S. Patent and Trademark Office among others, it knew or had reason to know that the information being disclosed was Alotech's trade secret and confidential information.

122. WCSR did not have Alotech's express or implied consent to use its trade secret or confidential information to Alotech's detriment or to disclose the trade secrets or confidential information to third parties.

123. Alotech derived economic value from its trade secrets and confidential information not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

124. Alotech took reasonable efforts under the circumstances to maintain the secrecy of its trade secrets and confidential information through means, including but not limited to the use of confidential disclosure agreements.

125. As a consequence of the foregoing, Counter-Plaintiffs have been damaged by WCSR's use and disclosure of Alotech's trade secrets and are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count VI**  
**Breach of the Confidential Disclosure Agreement (Against CEC)**

126. Alotech incorporates by reference the allegations in paragraphs 1 - 125 of its Counterclaims as if set forth fully herein.

127. CEC entered into the CDA with Alotech with the intent of inducing Alotech to disclose to CEC certain confidential information regarding its Ablation Technology.

128. Alotech disclosed such information to CEC pursuant to the terms of the CDA.

129. The CDA prohibits CEC from disclosing such information to third parties without the consent and approval of Alotech or using such information for purposes other than evaluating its business venture with Alotech.

130. CEC, nevertheless, did disclose certain confidential information of Alotech regarding the Ablation Technology to third parties, including but not limited to the U.S. Patent and Trademark Office, through the filing of a patent application in July 2003 and a provisional patent application on September 4, 2003.

131. The actions of CEC as described above, and as will additionally be shown at trial, constitute a breach of the CDA between Alotech and CEC. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

132. CEC also used Alotech's confidential information and trade secrets by attempting to assert ownership over them.

133. As a consequence of the foregoing, Alotech is entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count VII**  
**Breach of the Duty of Good Faith and Fair Dealing (Against CEC)**

134. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 133 of their Counterclaims as if set forth fully herein.

135. Under Georgia law, there is implied into every contract a covenant of good faith and fair dealing.

136. CEC had a duty to perform its obligations pursuant to the CDA according to its duty of good faith and fair dealing.

137. CEC breached the CDA as set forth herein.

138. The actions of CEC as described above, and as will additionally be shown at trial, are in breach of its obligation of good faith and fair dealing that it owed to Alotech.

139. CEC's actions have caused, and will continue to cause, damage to Alotech.

140. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count VIII**  
**Breach of Fiduciary Duty (Against WCSR)**

141. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 140 of their Counterclaims as if set forth fully herein.

142. Alotech and WCSR have a fiduciary and confidential relationship arising from their attorney-client relationship.

143. WCSR owes Alotech a fiduciary duty as a result of their relationship.

144. Pursuant to its fiduciary and confidential relationship with WCSR, Alotech disclosed certain confidential information to WCSR.

145. Pursuant to its fiduciary and confidential relationship with Alotech, WCSR had a duty to maintain the confidentiality of the confidential information disclosed by Alotech and to not misuse such information to Alotech's detriment.

146. As described herein, WCSR misused the confidential information disclosed by Alotech to Alotech's detriment and to the benefit of CEC, its long-standing client.

147. As described herein, WCSR also disclosed to third parties the confidential information it received from Alotech without Alotech's permission.

148. The actions of WCSR as described above, and as will additionally be shown at trial, constitute a breach of WCSR's fiduciary duty to Alotech. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

149. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count IX**  
**Professional Malpractice (Against WCSR)**

150. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 149 of their Counterclaims as if set forth fully herein.

151. Pursuant to the terms of the Engagement Letter, Alotech retained WCSR to represent it in certain matters.

152. The actions of WCSR as described above, and as will additionally be shown at trial -- including but not limited to using Alotech's confidential business information and trade secrets for the benefit of CEC, its long-standing client; continuing to represent CEC in violation of the Engagement Letter and conflict of interest principles and to the detriment of Alotech; and continuing to file patent applications regarding Alotech's confidential information at the instruction of CEC after terminating its representation of Alotech -- evidence WCSR's failure to exercise ordinary care, skill and diligence in performing legal services for Alotech during and after the course of its engagement by Alotech.

153. As a direct and proximate result of WCSR's failure to exercise ordinary care, skill and diligence, Alotech has sustained significant damages.

154. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

155. Pursuant to O.C.G.A. § 9-11-9.1, Counter-Plaintiffs have attached hereto as Exhibit "F" the Affidavit of David N. Lefkowitz, Esq. in support of their claim of professional malpractice.

**Count X**  
**Breach of the Engagement Letter (Against WCSR)**

156. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 155 of their Counterclaims as if set forth fully herein.

157. Alotech retained WCSR to represent it in certain intellectual property and business matters pursuant to the terms of the Engagement Letter.



158. WCSR agreed to the terms of the Engagement Letter as evidenced by the signature of its authorized representative affixed thereto.

159. The Engagement Letter explicitly requires that WCSR withdraw from its representation of Alotech and CEC in the case of specific conflicts.

160. A conflict arose between Alotech and CEC which required that WCSR withdraw from its representation of CEC and Alotech with respect to certain matters.

161. WCSR breached the Engagement Letter by refusing to withdraw from its representation of CEC with respect to the Subject Inventions and Business Venture as required by the Engagement Letter.

162. The actions of WCSR as described above, and as will additionally be shown at trial, constitute a breach of the Engagement Letter between WCSR, CEC and Alotech. Such actions have caused, and will continue to cause, irreparable injury to Alotech.

163. As a consequence of the foregoing breach of the Engagement Letter, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

#### **Count XI**

##### **Breach of the Duty of Good Faith and Fair Dealing (Against WCSR)**

164. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 163 of their Counterclaims as if set forth fully herein.

165. Under Georgia law, there is implied into every contract a covenant of good faith and fair dealing.

166. WCSR breached the Engagement Letter as set forth herein.

167. WCSR had a duty to perform its obligations pursuant to the Engagement Letter according to its duty of good faith and fair dealing.

168. The actions of WCSR as described above, and as will additionally be shown at trial, are in breach of its obligation of good faith and fair dealing that it owed to Alotech pursuant to the Engagement Letter.

169. WCSR's actions have caused, and will continue to damage Alotech.

170. As a consequence of the foregoing, Counter-Plaintiffs are entitled to such general, compensatory and consequential damages as are shown at trial, plus interest as provided by law.

**Count XII**  
**Conversion (Against CEC)**

171. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 170 of their Counterclaims as if set forth fully herein.

172. The Converted Equipment is the sole property of either Alotech, or of HA International, LLC, Park Ohio and Hitchcock Industries, Inc., all of whom loaned pieces of the Converted Equipment to Alotech and have authorized Alotech to act on their behalf to recover the Converted Equipment.

173. On several occasions, Alotech demanded that CEC return the Converted Equipment.

174. CEC refused Alotech's demands and it intentionally interfered with Alotech's possession and right to possession of the Converted Equipment without cause or permission.

175. As a result of CEC's unauthorized and illegal possession of the Converted Equipment, Alotech was damaged.

176. Based upon the actions of CEC as described above, and as will additionally be shown at trial, Counter-Plaintiffs are entitled to recover from CEC the actual damages suffered in an amount to be shown at trial.

**Count XIII**  
**Conspiracy (Against CEC and WCSR)**

177. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 through 176 of their Counterclaims as if fully set forth herein.

178. As set forth with more specificity above, CEC and WCSR acted together for the expressly or tacitly understood purpose of committing the illicit and tortious actions described in paragraphs 1 through 176 of Counter-Plaintiffs' Counterclaims.

179. As a consequence of the foregoing, Counter-Plaintiffs have been damaged and are entitled to such general, compensatory, and consequential damages as are shown at trial, plus interest as provided by law.

**Count XIV**  
**Punitive Damages (Against CEC and WCSR)**

180. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 179 of their Counterclaims as if set forth fully herein.

181. CEC and WCSR acted, or failed to act, as described above and as will additionally be shown at trial, with the specific intent to cause harm to Counter-Plaintiffs. CEC's and WCSR's actions, and failures to act, showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of conscious indifference to their consequences and for which Counter-Plaintiffs are entitled to recover punitive damages.

Count XV  
**Attorneys' Fees (Against WCSR and CEC)**

182. Counter-Plaintiffs incorporate by reference the allegations in paragraphs 1 - 181 of their Counterclaim as if set forth fully herein.

183. CEC and WCSR have acted in bad faith, have been stubbornly litigious, and have caused Counter-Plaintiffs unnecessary trouble and expense, thereby entitling Counter-Plaintiffs to an award of their expenses of litigation, including attorneys' fees.

**Prayer for Relief**

WHEREFORE, having asserted their counterclaims against CEC and WCSR, Counter-Plaintiffs pray for a jury trial on all issues so triable and for the following relief:

1) That a preliminary and permanent injunction issue enjoining CEC, WCSR, and all those in active concert with them from:

(a) further using or disclosing in any manner any of Alotech's trade secrets and confidential information;

(b) prosecuting, asserting or otherwise claiming any right in any patent application assigned to CEC which contains Alotech's trade secrets or confidential information, specifically including any patent application filed by WCSR on behalf of CEC after April 16, 2003; and

(c) tortiously interfering with Alotech's business relations or potential business relations with third parties;

2) That judgment be entered against CEC and WCSR for the damage they have caused to Counter-Plaintiffs in an amount not yet fully determined;

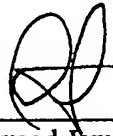
3) That Counter-Plaintiffs be awarded punitive damages in an amount to be determined by the enlightened conscience of the jury;

4) That Counter-Plaintiffs be awarded their costs and attorneys' fees for bringing this action; and

5) For such other relief as the Court deems just and proper.

Respectfully submitted this 10<sup>th</sup> day of March, 2005,

DUANE MORRIS LLP



---

L. Norwood Jameson  
(Georgia Bar No. 003970)  
Sean R. Smith  
(Georgia Bar No. 663368)  
Matthew C. Gaudet  
(Georgia Bar No. 287789)  
Matthew S. Yungwirth  
(Georgia Bar No. 783597)

1180 West Peachtree Street  
Suite 700  
Atlanta, Georgia 30309-3448  
(404) 253-6900

ATTORNEYS FOR  
DEFENDANTS/COUNTER-PLAINTIFFS  
Alotech, Ltd., John Grassi, John Campbell,  
and Campbell Technology, Ltd.


VERIFICATION

County of Gwinnett )

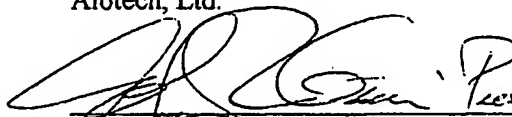
State of GA )

John Grassi personally appeared before me this date and, after being duly sworn, deposed and in his individual capacity and in his capacity as the president of Alotech, Ltd. said that: (a) he is authorized to make this verification on behalf of Alotech Ltd., (b) he has read the foregoing First Amended Verified Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC, and (c) that his individual responses and the responses of Alotech, Ltd. as well as the allegations in the counterclaim are true and correct to the best of his knowledge, information and belief.

This 19th day of February, 2005.

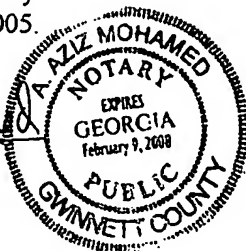
  
\_\_\_\_\_  
John Grassi, individually

Alotech, Ltd.

  
\_\_\_\_\_  
by: John Grassi, president

Sworn to and subscribed  
before me this 19th day  
of February, 2005.

  
\_\_\_\_\_  
Notary Public

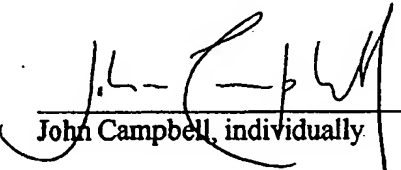


VERIFICATION

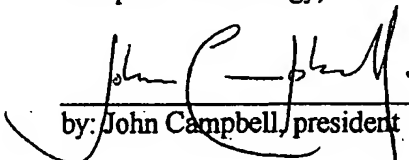
\_\_\_\_\_)  
\_\_\_\_\_)

John Campbell personally appeared before me this date and, after being duly sworn, deposed and in his individual capacity and in his capacity as the president of Campbell Technology, Ltd. said that: (a) he is authorized to make this verification on behalf of Campbell Technology, Ltd., (b) he has read the foregoing First Amended Verified Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC, and (c) that his individual responses and the responses of Campbell Technology, Ltd. as well as the allegations in the counterclaim are true and correct to the best of his knowledge, information and belief.

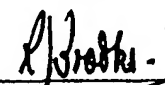
This 22nd day of February, 2005.

  
\_\_\_\_\_  
John Campbell, individually

Campbell Technology, Ltd.

  
\_\_\_\_\_  
by: John Campbell, president

Sworn to and subscribed  
before me this 22nd day  
of February, 2005.

  
\_\_\_\_\_  
Notary Public



## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between Alotech Ltd., a company having a principal place of business at Two Commerce Park Square, 23220 Chagrin Blvd., #105, Cleveland, Ohio 44122 ("Discloser") and Consolidated Engineering Company, Inc. a corporation having a principal place of business at 1971 McCollum Parkway, Kennesaw, Georgia 30144-3637 ("Recipient") effective as of the latter date of execution below.

WHEREAS, Discloser and Recipient (hereinafter jointly referred to as the "Parties" or individually as "Party") are contemplating a venture or business arrangement (the "Venture");

WHEREAS, Discloser may find it necessary or desirable from time to time to disclose to Recipient certain technical, manufacturing, marketing, and sales information in written, oral, and/or machine readable form; and

WHEREAS, Discloser considers a significant portion of such material to be valuable, proprietary, secret, and confidential.

NOW THEREFORE, in consideration of the mutual understandings hereinafter set forth, the parties agree that the Confidential Information which will be delivered to certain employees of Recipient will be subject to the following terms and conditions:

(1) All information provided by Discloser to Recipient pertaining to casting techniques employing aggregate molds, methods for manufacturing cast metal parts and related equipment therefor, whether the source of that information is Discloser or a subsidiary, parent, or affiliate of Discloser, will be deemed to be "Confidential Information" when it is properly labeled as such. Any information that may be verbally or visually disclosed by Discloser to Recipient should be briefly summarized in writing, by either party, with a properly labeled copy of such writing promptly provided to the other party thereafter.

(2) Recipient will use any such Confidential Information solely for the purpose of evaluating the Venture, and Recipient will not, under any circumstances, use the Confidential Information of the Discloser in any manner contrary to the best interests of, detrimental to, or in competition with Discloser.

(3) Recipient agrees to safeguard all Confidential Information disclosed by Discloser with the same degree of care with which it protects its own confidential information and that, without the written consent of Discloser, Recipient will not use such Confidential Information for its own benefit other than for the purposes of evaluating the Venture, and will not disclose such Confidential Information to any third party unless required to do so by competent legal authority. In the event Recipient receives notice of any legal proceeding to compel disclosure of Confidential Information provided by Discloser, it will promptly notify Discloser of such fact and afford it the opportunity to contest such proceeding.

(4) Upon the written request of Discloser, Recipient will: promptly return to Discloser all tangible forms of the Confidential Information provided by Discloser, including any copies made by the Recipient, destroy any software, machine readable code or other materials developed using the Confidential Information, and will not thereafter use or disclose the Confidential Information provided by Discloser, except as expressly permitted by this Agreement. Recipient shall also treat as confidential, for the term specified below, any documents, memoranda, notes, analyses, compilations, studies, and other writings that Recipient or its advisors prepare based on materials contained in Discloser's Confidential Information, though such documents et al shall remain the property of Recipient.



(5) Confidential Information may not be mechanically copied or otherwise reproduced without the express written permission of Discloser, except for such copies as Recipient may require pursuant to this Agreement for internal use in connection with its assessment of a Venture. To the extent that the original of such Confidential Information, as provided to Recipient, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized by Discloser prior to reproduction.

(6) All Confidential Information disclosed by Discloser to Recipient will remain the exclusive property of Discloser, and all rights to such Confidential Information will be held in trust by Recipient for the benefit of Discloser. Neither this Agreement nor the disclosure or revelation of Confidential Information hereunder will constitute or be construed as granting to Recipient, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which Discloser now or hereafter has title, or as imposing on Recipient any obligation, except as specified in this Agreement. Discloser does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.

(7) Recipient may provide access to the Confidential Information only to the employees having a need to know same for the aforesaid Venture evaluation purposes.

(8) Should access to the Confidential Information of Discloser by one or more of the employees of Recipient lead to improvement inventions in which one or more of such employees is named an inventor, Recipient agrees to instruct the employee to assign his or her rights in such improvement invention to Discloser. Recipient reserves a royalty-free, non-exclusive license, without right to sublicense, to any such improvement invention - but no license to any inventions of Discloser.

(9) If Discloser authorizes inspection of its facilities which employ technical information and know-how which may be used in the Venture, Recipient will observe the same confidentiality and use restrictions provided in this Agreement with respect to any such technical information and know-how which may come to the attention of, or be disclosed to, Recipient's employees during any such plant visit whether through discussions with such employees or through visual inspection of such plant facilities or otherwise.

(10) Discloser acknowledges that much of the Confidential Information provided pursuant to this Agreement will be obtained from its business records. Discloser believes its records are complete and accurate, but make no representations as to the completeness or accuracy of the Confidential Information therein contained and assume no responsibility or liability for the conclusions that may be derived from such Confidential Information. Discloser may not be held liable to Recipient for any errors or omissions in any of the Confidential Information disclosed to the other, nor for any liability to Recipient arising out of the use of any Confidential Information disclosed pursuant to this Agreement.

(11) The obligations set forth above will not be construed to prohibit:

a. The use or disclosure of any information previously known to the Recipient or independently developed by employees or agents of Recipient who have no access, direct or indirect, to any Confidential Information provided by Discloser;

b. The use or disclosure of any information which is or becomes publicly known through no wrongful act of the Recipient;

c. The use or disclosure of any information which is received from a third party which is under no confidentiality obligation to Discloser which provided the Confidential Information; or

d. The release of such Confidential Information is expressly agreed to and authorized by the Discloser as the case may be.

(12) This Agreement will remain in effect for a period of two (2) years from the date hereof unless sooner terminated or superseded by written agreement of the Parties; however, the term of this Agreement is subject to good faith negotiation between the parties to decrease the term of the Agreement. The confidentiality obligations imposed by this Agreement with respect to Confidential Information received prior to its termination will survive the termination hereof for a period of five (5) years.

(13) No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

(14) The validity, interpretation and effect of this Agreement will be governed by the laws of the State of Ohio.

(15) No amendment to the terms and conditions of this Agreement will be valid and binding on the Parties hereto unless made in writing and signed by an authorized representative of each of the Parties.

(16) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors, assigns, subsidiaries, and affiliates.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year shown.

Alotech, Ltd.

By: 

Name: John R. Grassi

Title: President & CEO

Dated: 13<sup>th</sup> Dec 2002

Consolidated Engineering Company, Inc.

By: 

Name: Paul M. Crafton

Title: Sr. Vice President

Dated: 12 December 2002

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A PROFESSIONAL LIMITED  
LIABILITY COMPANY

One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: [www.wcsr.com](http://www.wcsr.com)

D. Scott Sudderth  
Direct Dial: (404) 962-7527  
Direct Fax: (404) 870-8177  
E-Mail: [ssudderth@wcsr.com](mailto:ssudderth@wcsr.com)

cc SPC

April 16, 2003

Mr. Franz Ruegg  
Consolidated Engineering Company, Inc.  
1971 McCollum Parkway  
Kennesaw, GA 30144

Mr. John Grassi  
Attn: Legal Department  
Alotech, LLC  
1971 McCollum Parkway  
Kennesaw, GA 30144

RE: Consent to Representation of Alotech, LLC and Consolidated Engineering Company  
Our Reference Number: C152 9009

Dear Mr. Ruegg and Mr. Grassi:

As you know, Womble Carlyle Sandridge & Rice, PLLC ("WCSR") currently serves as counsel to Consolidated Engineering Company ("CEC") in a number of matters, including patent and technology matters. We have been advised that Alotech, LLC ("Alotech") owns certain technology and inventions (collectively, the "Alotech Inventions") and that CEC and Alotech have negotiated, are negotiating and continue to negotiate a mutual understanding and agreements directed to the ownership, management, control and other handling of the Alotech Inventions and related, future inventions (the Alotech Inventions and related, future Inventions being collectively referred to herein as the "Subject Inventions"). WCSR is and will continue to represent CEC in those negotiations and in connection with any rights that CEC may have or acquire either in the Subject Inventions or any joint venture or other entity (the "Business Venture") that may be formed by CEC and Alotech as the result of their negotiations. We understand that Alotech is currently represented by its own legal counsel in the negotiations with CEC concerning the Business Venture and in connection with any rights that Alotech may have or acquire either in the Subject Inventions or in the Business Venture itself. We understand that Alotech's legal representation includes representation by the law firm of Fay, Sharpe, Fagan, Mirmich & McKee, LLP ("FSFMM"), which currently represents Alotech in certain patent matters. We are also advised that CEC and Alotech have entered into a confidentiality agreement whereby the parties have exchanged and will continue to exchange confidential information related to the Subject Inventions and matters related to their negotiations regarding the proposed Business Venture.

In addition to WCSR's ongoing representation of CEC in connection with the negotiations between CEC and Alotech respecting the Business Venture, WCSR has been requested to represent Alotech in connection with certain patent applications relating to certain of the Subject Inventions, and to cooperate with FSFMM in its representation of Alotech with regard to the protection of past, present and future Subject Inventions. The proposed representation of Alotech will be limited to patent searching, the preparation and filing of patent applications relating to certain of the Subject Inventions, and representation of Alotech before the

United States Patent and Trademark Office in connection with the prosecution of patent applications relating to the Subject Inventions. We understand that we may also be asked to represent the interests of the Business Venture once formed by the parties.

This proposed representation may give rise to one or more conflicts of interest between CEC and Alotech and, thus, in accordance with the applicable rules of professional responsibility, we will require the advance consent and waiver of both CEC and Alotech of any such conflict that may arise as the result of our acceptance of the proposed representation of Alotech.

Under the applicable rules of professional responsibility, we may only undertake this concurrent representation of CEC and Alotech (and, if requested, the Business Venture) if:

- (1) our firm reasonably believes that the lawyers in our firm who will be involved in the representation will be able to provide competent and diligent representation to each client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against the other; and
- (4) each client gives informed consent, confirmed in writing.

The purpose of this letter is to confirm our discussions concerning the issues relating to a concurrent representation such as this, and to request that each of CEC and Alotech consent to this representation in writing, as required by the foregoing rules of professional responsibility. As we discussed, while CEC and Alotech are technically adverse to one another in their negotiations toward the proposed Business Venture, we believe that the interests of CEC and Alotech are generally aligned towards the common goal of establishing a successful Business Venture. Accordingly, as long as the parties' respective interests remain so aligned, we believe that we can render competent and diligent representation to each of CEC and Alotech, as required by the foregoing rules.

You acknowledge that this concurrent representation of Alotech and CEC will involve the sharing of confidential information of Alotech with WCSR, FSFMM and CEC. Further, while both WCSR and FSFMM will do their best, in good faith, to pursue the patent protection of the Subject Inventions in a manner that will be the benefit of both parties, it is ultimately the responsibility of CEC and Alotech to determine what is in their respective best interests, and to convey their respective determinations to counsel. To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position


to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

By its signature below, each of CEC and Alotech represents that, after consultation with independent counsel, it consents to WCSR's continued representation of CEC including, without limitation, matters related to Alotech and the Subject Inventions and, further that it waives any conflict of interest that may arise as the result of WCSR's concurrent representation of CEC and Alotech in the matters described in this letter.

If a Business Venture is ultimately formed by CEC and Alotech, we will likewise request a separate consent letter from the Business Venture.

We look forward to the opportunity to representing CEC and Alotech. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,  
Womble Carlyle Sandridge & Rice, PLLC

  
D. Scott Sudderth

cc: Louis T. Isaf, Esq.  
M. Christopher Bolen, Esq.  
Ken Kendrick, Esq.

AGREED AND CONSENTED TO:

CONSOLIDATED ENGINEERING COMPANY, INC

ALOTECH, LLC

By: 

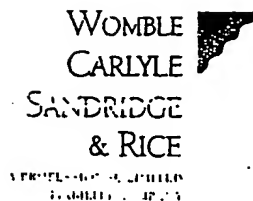
By: 

Title: President & CEO

Title: President & CEO

Date: April 23, 2003

Date: April 22, 2003



One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 372-7000  
Fax: (404) 888-7490  
Web site: www.wcsr.com

D. Scott Sudderth  
Direct Dial: (404) 962-7527  
Direct Fax: (404) 870-8177  
E-Mail: ssudderth@wcsr.com

May 27, 2003

Mr. Franz Ruegg  
Consolidated Engineering Company, Inc.  
1971 McCollum Parkway  
Kennesaw, GA 30144

Mr. John Grassi  
Attn: Legal Department  
Alotech, LLC  
1971 McCollum Parkway  
Kennesaw, GA 30144

RE: Withdrawal from Representation of Alotech, LLC  
Our Reference Number: C152 9009

Dear Mr. Ruegg and Mr. Grassi:

This letter is further to our letter to you of April 16, 2003 (the "Representation Letter"). Unless otherwise defined in this letter, capitalized terms appearing in this letter will have the meaning given those terms in the Representation Letter.

As you know, in accordance with the Representation Letter, WCSR has represented and advised CEC in connection with its negotiations toward a proposed Business Venture with Alotech. Although the parties are continuing their discussions, to date the parties have not yet reached agreement concerning any proposed Business Venture.

In addition, pursuant to the Representation Letter, and at CEC's request and on Alotech's behalf, WCSR has filed two provisional patent applications for Subject Inventions and one trademark application for the mark ABLATION (collectively, the "Applications") in the U.S. Patent and Trademark Office (the "USPTO"). WCSR has taken no other action on Alotech's behalf and has received no confidential or proprietary information from Alotech relating to any proposed Business Venture with CEC.

The purpose of this letter is to inform you of our firm's withdrawal from our limited representation of Alotech in connection with the Applications, effective immediately. Accordingly, we will forward all of our files respecting the Applications to Alotech's law firm, FSFMM, or such other law firm as Alotech may designate in writing. We will take no further action on the Applications, except as representatives of CEC, and will forward any future correspondence or documents we receive from the USPTO directly to FSFMM or other designated firm for handling. We also suggest that FSFMM or any other firm designated by Alotech immediately file a power of attorney or substitute power of attorney, as the case may be, with the USPTO respecting each of the Applications, so that such documents and correspondence are sent directly to such firm in the future. At the request of FSFMM or other firm designated by Alotech, we will place a change of representative and address in the provisional application files at the USPTO.

As a consequence of our withdrawal from our representation, effective immediately our firm no longer represents Alotech. Except for the obligations described in the preceding paragraph, WCSR will have no further obligations to Alotech, either with respect to the Applications or otherwise. Our firm will hereafter represent only the interests of CEC. In light of the unrelated, limited nature of our prior representation of Alotech (i.e., with respect only to the Applications), we reserve the right to continue our representation of CEC in all matters, including but not limited to matters relating to any Business Venture that may be formed by the parties. Without limiting the scope of our representation of CEC, we note that, at the request of CEC and acting on CEC's behalf, we will continue to assist CEC with (i) the analysis of Subject Inventions, (ii) the preparation and review of patent applications for Subject Inventions, and (iii) the prosecution of such applications, but always and only as CEC's representative.

If you have any questions or wish to discuss this matter further, please contact me immediately so that we may address any questions you may have.

Very truly yours,

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

  
D. Scott Sudderth

cc: Louis T. Isaf, Esq.  
M. Christopher Bolen, Esq.  
Ken Kendrick, Esq.  
Bill Raper, Esq.

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A PROFESSIONAL LIMITED  
LIABILITY COMPANY



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Louis T. Isaf  
Of Counsel  
Direct Dial: (404) 962-7523  
Direct Fax: (404) 870-8173  
E-mail: [lisaf@wcsr.com](mailto:lisaf@wcsr.com)

June 11, 2003

Jay F. Moldovanyi, Esq.  
Fay, Sharpe, Fagan, Minnich & McKee, LLP  
1100 Superior Avenue  
Seventh Floor  
Cleveland, Ohio 44114-2579

Re: Alotech LLC  
Our Reference Number: C152 9009

Dear Jay:

Womble Carlyle Sandridge & Rice, PLLC has formally withdrawn from its short representation of Alotech. A copy of our withdrawal letter dated May 27, 2003, to Alotech and CEC is attached for your reference.

With reference made to the withdrawal letter, we enclose herewith the following 2 U.S. provisional patent applications and 1 U.S. trademark application:

Application No. 60/460,250  
Filed: April 4, 2003  
Entitled: Microstructure of a Shaped Casting Solidified by A Mold Ablation Process

Application No. 60/465,413  
Filed: April 25, 2003  
Entitled: Casting Mold Manufacturing Process Using Inorganic Binder

Application No. 78/248,840  
Filed: May 13, 2003  
Entitled: ABLATION

Kindly, acknowledge safe receipt of these files.

Please let me know if we can assist you with the transition of Powers of Attorney and contact information.

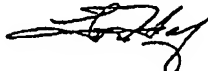


Jay F. Moldovanyi, Esq.  
Fay, Sharpe, Fagan, Minnich & McKee, LLP  
June 11, 2003  
Page 2

As reflected in the attached withdrawal letter, our action is taken to make clear that we represent solely CEC, while, for example, you represent Alotech. It is not our intention, by any means, to "walk away" from the joint project being engaged in by CEC and Alotech. On the contrary, we will remain fully involved as legal and patent representatives of CEC. In that capacity, we will, among other things, remain committed to the tasks set-out for us by Joe Oczkowski in his letter of April 4, 2003, addressed to both you and me. However, in fulfilling these tasks, we will prepare, at the request of CEC, documents, responses, and analyses, etc. and pass the same back to CEC, our client, for delivery to and filing by you, as appropriate, as counsel to Alotech. At CEC's request, we will from time-to-time interact directly with your offices. We continue to look forward to working with you in an effort to assist our respective clients in their cooperative business venture.

If you have any questions regarding any of this information, please give us a call.

Very truly yours,



Louis T. Isaf

DSS/ss

Enclosures

cc: D. Scott Sudderth, Esq.  
Joseph H. Oczkowski, Esq.  
John Grassi (Alotech Ltd)  
Nesbit S. Kendrick III, Esq.

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A PROFESSIONAL LIMITED  
LIABILITY COMPANY

One Atlantic Center  
1201 West Peachtree Street  
Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 872-7000  
Fax: (404) 888-7490  
Web site: [www.wcsr.com](http://www.wcsr.com)

Nisbet S. Kendrick III

Direct Dial: (404) 888-7488  
Direct Facsimile: (404) 870-4861  
[kkendrick@wcsr.com](mailto:kkendrick@wcsr.com)

March 11, 2004

Mr. J.R. Grassi  
ALLOTECH, LLC  
1558 Ridenour Parkway  
Kennesaw, Georgia 30152

Re: *Provisional Patent Application Docket No. EV298917007US, "Binder  
Compositions and Methods for Making Same" (the "Provisional Patent  
Application")*

Dear Mr. Grassi:

Your correspondence which bear the dates January 6, 2004 and January 30, 2004, addressed to Mr. Scott Sudderth at Womble Carlyle Sandridge & Rice, PLLC ("WCSR") has been referred to me for response.

Please be advised that WCSR has not provided counsel to Consolidated Engineering Company, Inc. ("CEC") with regard to business dispute with Allotech, LLC since the firm's withdrawal of representation of Allotech in accordance with our letter dated May 27, 2003. In November, when WCSR first learned that CEC and Allotech might become involved in a dispute regarding their past or future working arrangements, WCSR discontinued any representation of or counsel to CEC regarding Allotech other than to respond to a request for certain information directed to counsel for Allotech to WCSR. WCSR has continued to provide intellectual property representation to CEC on matters that predate the firm's limited representation of Allotech and will continue to do so. Allotech consented to that representation in correspondence executed on April 16, 2003, after consultation with its independent counsel. Since the date of our withdrawal from representation of Allotech, WCSR has not represented CEC with regard to a "Subject Invention," as that term is defined in the foregoing letter agreement, with the exception of filing the Provisional Patent Application discussed below.

ATLANTA 389805V1 GEORGIA / NORTH CAROLINA / SOUTH CAROLINA / VIRGINIA / WASHINGTON D.C.

Mr. J.R. Grassi  
March 11, 2004  
Page Number 2

In early September, at a time we understood that CEC and Allotech were continuing to pursue a joint venture, CEC requested that WCSR file a provisional patent application styled "*Binder Compositions and Methods for Making Same*" showing you as the inventor of the technology described therein. That application was filed on September 4, 2003. A copy of that application is enclosed for your records. We will forward the original application to Jay Moldovanyi at Fay, Sharpe, Fagan, Minnich & McKee, LLP as counsel to Allotech.

Please direct any further correspondence regarding the matters discussed in your correspondence dated January 6, 2004 and January 30, 2004 to my attention.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE  
*A Professional Limited Liability Company*



Nisbet S. Kendrick III

NSK/abv

My name is David N. Lefkowitz. I am over the age of twenty-one and suffer from no legal disabilities.

2.

I give this affidavit based upon my own personal knowledge derived from my review of the Verified Answer to Verified Complaint for Damages, Specific Performance and Injunctive Relief and Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC, and the First Amended Verified Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC ("Amended Counterclaims") and the exhibits attached thereto in the above-referenced case, and from my education, training, and experience as a licensed attorney in the State of Georgia. This affidavit is given for the purpose of being attached to the Amended Counterclaims in the above-stated case, as required by Georgia law, and for all other purposes allowed by Georgia law.

3.

I am an attorney licensed to practice law in the State of Georgia. I received a Juris Doctorate degree from Emory University in 1988. I am familiar with the standard of skill, care, and diligence normally possessed and utilized by attorneys in Georgia and elsewhere who represent clients in circumstances similar to those in which the Counter-Defendant, Womble, Carlyle, Sandridge & Rice, PLLC ("WCSR"), represented the Counter-Plaintiff Alotech, Ltd. ("Alotech") in the matter that forms one of the bases of the present case.

4.

For purposes of this affidavit, I assume the following allegations to be true:

(a) On April 16, 2003, Alotech and Consolidated Engineering Company, Inc. ("CEC") – who were engaged in a possible business venture relating to Alotech's technology (the "Ablation Technology") – executed an engagement letter with WCSR (the "Engagement Letter"), establishing WCSR's dual representation of both Alotech and CEC.

- (b) The Engagement Letter includes the following conflicts of interest clause:

To the extent that CEC and Alotech can not agree for any reason (including but not limited to lack of time to react) on a particular action with respect to a Subject Invention, can not reach a mutually agreed position with respect to one or more of the Subject Inventions, or otherwise appear to have interests that are not aligned, either in connection with a Subject Invention or the Business Venture, WCSR will not be in a position to represent either CEC or Alotech in such dispute and will be required to withdraw from the representation.

(c) After the attorney-client relationship began and pursuant to the terms of the Engagement Letter, Alotech disclosed the Ablation Technology to WCSR.

(d) WCSR subsequently sent a letter to CEC and Alotech dated May 27, 2003, in which WCSR purported to withdraw from representing Alotech (the "Withdrawal Letter").

(e) On September 4, 2003, WCSR filed a provisional patent application at the instruction of CEC related to the subject matter disclosed by Alotech to WCSR. The subject matter of this application was intended by Alotech to be kept as a trade secret and not to be the subject of a patent filing.

(f) This September 4, 2003 provisional patent application named John Grassi, president of Alotech, as the inventor of the technology described therein.

(g) This September 4, 2003 provisional patent application was filed by WCSR at CEC's instruction more than three (3) months after WCSR purportedly withdrew from representing Alotech regarding the Ablation Technology.

(h) WCSR did not consult with Alotech or John Grassi before filing this application and did not disclose to Alotech or John Grassi until March 11, 2004, that the September 4 provisional patent application was filed.

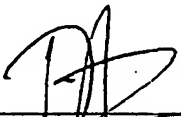
5.

In my opinion, based upon my education, training and experience as a licensed attorney in the State of Georgia, the standard of care applicable to Georgia attorneys who represent clients under circumstances such as those described above requires that the attorney should not use confidential information of a former client (obtained during the course of representing that former client) for the benefit of another client, and should not engage in any activity that presents a conflict of interest based on confidential information obtained from a former client

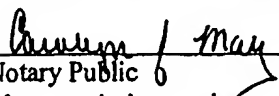
6.

In my opinion, based upon my education, training and experience as a licensed attorney, and upon my assumption that the above-recited summarized allegations are true, Counter-Defendant WCSR violated the required standard of skill, care and diligence, and, therefore, committed legal malpractice by filing the September 4, 2003 provisional patent application naming John Grassi as the inventor after having withdrawn from representing Alotech in or around May 27, 2003, and by failing to disclose the filing of that September 4, 2004 provisional application to John Grassi and Alotech for over eight (8) months.

FURTHER, AFFIANT SAITH NOT.

  
\_\_\_\_\_  
DAVID N. LEFKOWITZ

Sworn to and subscribed before me,  
this 28th day of February 2005.

  
\_\_\_\_\_  
Notary Public  
My commission expires:

Carolyn J. May  
\_\_\_\_\_  
Notary Public, DeKalb County, Georgia  
My Commission Expires Oct. 25, 2008

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served counsel for all parties to this action with a copy of the foregoing First Amended Verified Counterclaims Against Consolidated Engineering Company, Inc. and Womble, Carlyle, Sandridge & Rice, PLLC by United States Mail addressed as follows:

Timothy H. Kratz, Esq.  
Luke Anderson, Esq.  
Robert L. Florence, Esq.  
MCGUIRE WOODS LLP  
1170 Peachtree Street, N.E.  
Suite 2100  
Atlanta, Georgia 30309-7649

Ralph B. Levy, Esq.  
J. Patrick Brumbaugh, Esq.  
KING & SPALDING LLP  
191 Peachtree St.  
Atlanta, Georgia 30303

This 10<sup>th</sup> day of March, 2005.



\_\_\_\_\_  
Matthew C. Gaudet



COBB COUNTY, GA  
FILED IN OFFICE

05 OCT -4 AM 11:34

Jay C. Stephenson  
COBB SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING  
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

ALOTECH, LTD., JOHN GRASSI, JOHN  
CAMPBELL, and CAMPBELL  
TECHNOLOGY, LTD.,

Defendants/Counter-Plaintiffs,

v.

WOMBLE, CARLYLE, SANDRIDGE &  
RICE, PLLC,

Counter-Defendant.

CIVIL ACTION NO. 04-1-01071

**AMENDED CONSENT PROTECTIVE ORDER**

For good cause having been shown, IT IS HEREBY ORDERED that, pursuant to O.C.G.A. § 9-11-26(c), a Protective Order ("Order") in the above-captioned action (the "Action"), shall be entered as follows:

1. This Order shall govern all productions or disclosures made during the Action whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party in the Action or any third party (the "Producing Party") to any other party (the "Receiving Party"), when so designated in accordance with the procedures set forth herein. This Order is binding upon the parties to the Action, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, agents,

representatives, officers and employees and others as set forth in this Order.

2. Any party or nonparty may designate as CONFIDENTIAL, in whole or in part, any non-public document, thing, or information (collectively "Material") which that party has a good faith belief constitutes or contains confidential or proprietary information and which is to be disclosed or produced to a party, expert or witness in the Action.

3. The designation of Material as CONFIDENTIAL shall be made, where practical, by marking each page of a document, each separate part or component of a thing, or each separate item of other information in a conspicuous manner. If it is not practical to so mark the Material itself, a container for or a tag attached to the Material shall be so marked. The marking shall state "CONFIDENTIAL."

4. In lieu of marking the original of Material prior to inspection, any Producing Party, other party or non-party, or their counsel may orally designate any Material being produced for inspection by counsel for a party as CONFIDENTIAL, thereby making it, and the information it contains, temporarily subject to this Order. However, each copy of Material subsequently delivered to inspecting counsel must be marked CONFIDENTIAL as required by this Order at the time it is so delivered in order to make the Material and copies of the Material subject to this Order. Inadvertent failure to designate Material as CONFIDENTIAL at the time of production may be remedied by supplemental written notice, accompanied by substitute copies of Material appropriately designated. If such notice is given, all Material so designated shall be fully subject to this Order as if it had been initially designated as CONFIDENTIAL. Within ten (10) days of receipt of these substitute copies, the Receiving Party shall return the previously unmarked or otherwise improperly designated Material and all copies thereof. The Receiving Party shall not be liable for any

harm caused by any disclosures resulting from the Producing Party's inadvertent disclosure or failure to designate Material in accordance with this Order. A Producing Party is not precluded by this Order from disclosing or using the Material produced by that party in any manner as it may deem fit.

5. During the course of a deposition taken in the Action, if any questions are to be asked or any answers are to be given containing confidential information or regarding any Material designated CONFIDENTIAL, then only persons designated in Paragraph 9 below, the deponent (and the deponent's counsel, including their staff and associates, in the case of a separately represented non-party), and the reporter and/or videographer shall be allowed to be present during such portion of the deposition. This paragraph shall not be deemed to authorize disclosure of any Material designated CONFIDENTIAL to any person to whom disclosure is prohibited under this Order.

6. With respect to depositions of any party, non-party, or any person employed by, formerly employed by, or acting on behalf of a party to this Action, any party at the deposition may designate the deposition or portions thereof as CONFIDENTIAL and request that the reporter insert a statement regarding the confidentiality of the information into the deposition transcript. Additionally, any party may after receipt of the deposition transcript inform the other parties, in writing, that portions of the transcript are designated CONFIDENTIAL. All deposition transcripts shall be deemed temporarily subject to this Order as if marked CONFIDENTIAL for fifteen (15) days from such delivery to permit any party to correct any inadvertent failure to mark deposition transcripts as CONFIDENTIAL. No such deposition transcript shall be disclosed to any person other than the persons described in Paragraph 9 below consistent with the provisions therein, and the deponent (and

the deponent's counsel in the case of a separately represented nonparty), and no person attending such a deposition shall disclose the contents of the deposition to any person other than those described in Paragraph 9 consistent with the provisions therein. Upon being informed that certain portions of a deposition are designated as CONFIDENTIAL, each party shall cause each copy of the transcript in its possession, custody or control to be so marked, to the extent not already marked by the reporter.

7. All CONFIDENTIAL Material produced in this Action shall not be used by any Receiving Party or disclosed to anyone for any purpose other than in connection with this Action. Material designated CONFIDENTIAL shall not be disclosed by the Receiving Party to anyone other than those persons designated in Paragraph 9 below consistent with the provisions therein, unless and until the restrictions herein are removed by order of the Court or by the Producing Party. If Material so designated is disclosed to any person other than in the manner authorized in this Order, the party responsible for the disclosure will immediately upon learning of such disclosure inform the Producing Party of all pertinent facts relating to such disclosure and shall make every effort to recover the Material and all copies of the Material disclosed without authorization and to prevent disclosure by each unauthorized person who received such Material.

8. Any party may object to the designation of specific Material as CONFIDENTIAL by serving a written objection upon the Producing Party's counsel. The Producing Party or its counsel shall thereafter, within ten (10) calendar days, respond (by hand delivery, courier, e-mail or facsimile transmission) to such objection in writing by either: (i) agreeing to remove or modify the designation or (ii) stating the reasons why the designation was made. If the objecting party and the Producing Party are subsequently

unable to agree upon the terms and conditions of disclosure for the Material in issue, or if the producing party does not respond within ten (10) calendar days, the objecting party shall be free to move the Court for an order removing or modifying the disputed designation. That obligation to move the Court to remove or modify a designation shall not affect the allocation of the burden of proof on the issue, which will remain with the Producing Party. The Material in issue shall continue to be treated in the manner as designated by the Producing Party until the Court orders otherwise. Failure of any party to challenge a claim of confidentiality of any Material shall not constitute a waiver of the right to assert at any subsequent time that the Material is not confidential or that the designation is not appropriate for any reason.

9. Access to Material designated as CONFIDENTIAL under this Order and to any portion of any transcript, brief, affidavit, memorandum or other Material that contains, or reveals Material so designated shall be limited to the following:

- a) outside counsel of record for the parties, including their partners and associates who assist them in this matter;
- b) the clerical employees of such outside counsel (including secretaries, paralegals, and clerks) and independent litigation support service personnel who are actually assisting such counsel in the preparation of this case;
- c) three (3) representatives of each party designated to review Material designated as CONFIDENTIAL for the purposes of assisting outside counsel in the litigation, and who have agreed to be bound by the terms of this Order and have signed a fully completed consent in the form attached as Exhibit A which shall be delivered to counsel for all other parties before such

representative shall be given access to any Material marked as CONFIDENTIAL;

d) subject to the provisions of Paragraph 10 below, non-party experts or consultants including their secretarial and clerical personnel retained to assist counsel of record in this case who have agreed to be bound by the terms of this Order by signing a copy of a consent in the form attached as Exhibit A, provided that an individual shall not be considered a "non-party expert or consultant" for purposes of this subparagraph if the individual is or has been an officer, director, partner or employee of the Receiving Party or of a subsidiary, parent or affiliate of the Receiving Party within one (1) year of his retention by the party for this litigation;

e) any bona fide potential or actual witness either explicitly named in the designated Material as an author or recipient or whom counsel herein reasonably believes has otherwise received such designated Material (and any counsel of any such witness);

f) court reporters involved in transcribing depositions or other proceedings in this litigation, and videographers involved in recording depositions;

g) the Court and members of the jury in this case;

h) employees of independent copy services, printers or illustrators, for the sole purpose of making copies of documents and exhibits to be used in this litigation;

i) any other persons with the prior written consent of the Producing Party;

- j) any other persons with the prior authorization of the Court; and
- k) two (2) representatives of each party's insurance carrier (provided that such party believes in good faith that such insurance carrier has issued a policy under which one or more of the claims asserted in this Action is covered) designated to review Material designated as CONFIDENTIAL for the purposes of analyzing the claims in the litigation, and who have agreed to be bound by the terms of this Order and have signed a fully completed consent in the form attached as Exhibit A which shall be delivered to counsel for all other parties before such representative shall be given access to any Material marked as CONFIDENTIAL.

10. A party desiring to disclose Material designated as CONFIDENTIAL to non-party experts or consultants shall first obtain from each party or consultant a signed consent in the form attached as Exhibit A.

(a) Furthermore, with the exception set forth in paragraph 10(b) below, each consultant or expert to whom a party proposes to give access to Material designated CONFIDENTIAL pursuant to this Order by a Producing Party shall be identified by notice in writing to counsel of said Producing Party and other counsel of record at least ten (10) days before being given such access. Such notice in writing shall include for the consultant or expert to whom disclosure is proposed, a complete consent form as attached hereto as Exhibit A and a current resume. Should the Producing Party object within such ten (10) day period to the disclosure of its Material designated CONFIDENTIAL to the proposed consultant or expert, no such Material designated CONFIDENTIAL shall be disclosed to the proposed consultant

or expert until the objection has been resolved by the parties or the Court, and the burden shall be on the party objecting to the disclosure to prove the grounds for such objection. If the Producing Party does not object within such ten (10) day period, such non-party consultant or expert shall be permitted such access. In the event the Producing Party makes a timely objection, it must also seek relief from the Court within twenty (20) days from the date it first received notice (or within such time as agreed by the parties); otherwise such consultant or expert shall be permitted such access.

(b) The ten (10) day advance identification procedure required in paragraph 10(a) shall not apply to any lawyer retained or specially employed by any party as a non-testifying consultant or expert who signs Exhibit A before being provided Material designated as CONFIDENTIAL provided, however, that identification shall be required immediately upon such lawyer being engaged to provide testimony in the Action or the conclusion of the Action, whichever first occurs.

11. All attorneys at McGuireWoods LLP and any other litigation counsel for Consolidated Engineering Company, Inc. ("CEC") who access Confidential Information under this Order shall not be involved: (1) in the preparation and prosecution of patent applications, including U.S. Patent Application, Serial No. 10/616,750, relating to Ablation Technology, or (2) participate in the preparation and prosecution of patent applications relating to Ablation Technology until one (1) year after the conclusion of this litigation, including appeals. To ensure that this provision is effectively enforced, McGuireWoods, LLP shall establish a Chinese wall between: (1) those McGuireWoods personnel



representing CEC in this litigation, and (2) those McGuireWoods personnel involved in the preparation and prosecution of patent applications on behalf of CEC relating to the Ablation Technology.

12. Each recipient of Material designated CONFIDENTIAL shall maintain such Material in a secure, safe area and shall exercise, at minimum, the same standard of care with respect to the storage, custody, use and dissemination of such Material as is exercised by the Receiving Party with respect to its own confidential Material.

13. Material designated CONFIDENTIAL which is filed with the Court for any purpose shall be filed in a sealed envelope and shall not be disclosed to the clerk or any other person except upon further order of this Court. Marked on the outside of the sealed envelope shall be the title of the Action, an identification of the Material within, and a statement substantially in the following form:

"CONTAINS CONFIDENTIAL INFORMATION FILED  
UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER  
OF [DATE]. TO BE OPENED ONLY BY OR AS DIRECTED  
BY THE COURT OR BY STIPULATION OF THE PARTIES  
SUBJECT TO THE APPROVAL OF THE COURT."

Nothing in this Order, however, shall be deemed to prevent either side from introducing any documents or Material designated CONFIDENTIAL into evidence at the trial of the matter, or from using any information contained in Material designated CONFIDENTIAL at any hearing or the trial of this matter.

14. Counsel and any person or entity who obtains access to Material designated CONFIDENTIAL (or the contents thereof) produced pursuant to this Action shall not make copies, duplicates, extracts, summaries, or descriptions of the Material designated CONFIDENTIAL or any portion thereof except as may be necessary in connection with this

Action. Any such copies, duplicates, extracts, summaries or descriptions of Material designated CONFIDENTIAL shall be treated as Material designated CONFIDENTIAL subject to all the terms and conditions of this Order.

15. Production of Material by a party is not deemed to be a publication of the discovery Material produced as to void or make voidable whatever claim that party may have as to the confidential nature of the Material.

16. Other Proceedings: By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another Court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Order that may be subject to a motion to disclose another party's Material designated CONFIDENTIAL pursuant to this Order, shall promptly notify that party of the motion so that it may have an opportunity to appear and be heard on whether that information should be disclosed.

17. Within sixty (60) days after final determination of this Action, including any appeals related thereto, all Material designated CONFIDENTIAL which has been served or otherwise made available by the designating party to another party during the course of this Action, together with all reproductions, copies, abstracts, indices or summaries of that Material, shall be destroyed (and such destruction is to be confirmed in writing) or delivered to counsel for the Producing Party. Notwithstanding the above, in order to maintain a complete file of the litigation, each outside trial counsel of the parties may retain one copy of all pleadings, briefs, affidavits or other papers filed with the Court that discuss, refer to or attach Material designated CONFIDENTIAL, provided that such papers and Material is maintained in accordance with the terms set forth above.

18. Nothing in this Order shall be construed as requiring disclosure of privileged Material, Material subject to protection under the attorney work product doctrine, or Material which is otherwise beyond the scope of permissible discovery.

19. Nothing in this Order shall be construed to prevent a party or nonparty from seeking such further provisions regarding confidentiality as may be appropriate, moving the Court for relief pursuant to Paragraph 8, or, separately, moving the Court for modification of any of the terms of this Order on a going-forward basis.

20. Nothing in this Order shall be construed as a waiver by a party of any objections that might be raised as to the admissibility at trial of any evidentiary Material.

21. The designation of Material as CONFIDENTIAL under this Order shall not restrict the use of information, documents or knowledge:

- (a) acquired by publicly available means;
- (b) independently developed by the Receiving Party without use of or reliance on the Producing Party's CONFIDENTIAL Material;
- (c) acquired by the Receiving Party from an independent source without restriction as to use or obligations as to confidences; and
- (d) that was, prior to disclosure by the Producing Party, rightfully in the possession or knowledge of the Receiving Party.

However, in case of a dispute regarding such independent or prior acquisition, development or possession, the person or entity seeking to use any such information, document or knowledge shall bear the burden of proof to show such independent or prior acquisition, development or possession. Nothing in this Order shall supercede any preexisting agreement between the parties with respect to the confidentiality of Material exchanged between the

parties by means other than production in this Action.

22. This Order is binding upon the parties, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, agents, representatives, officers and employees and others as set forth in this Order.

23. This Order shall supersede the Consent Protective Order and the Order Amendment previously entered by this Court.

24. Unless otherwise ordered by this Court, the obligations imposed by this Order shall remain in effect after the final determination of the Action and the Court shall retain jurisdiction of this action after its final disposition for the purpose of enforcing this Order.

SO ORDERED this 3rd day of Oct, 2005,



Judge, Superior Court of Cobb County

Consented to by:

DATED: 9/28, 2005

By: Timothy Kratz (signed w/express permission by MSY)  
MCGUIRE WOODS LLP  
Timothy H. Kratz  
Luke Anderson  
Robert L. Florence  
1170 Peachtree Street, N.E.  
Suite 2100  
Atlanta, Georgia 30309-7649

Counsel for Plaintiff/Counter-Defendant  
Consolidated Engineering Company, Inc.

DATED: 9/28, 2005

By: Matthew Morris  
DUANE MORRIS, LLP  
L. Norwood Jameson  
Sean R. Smith  
Matthew C. Gaudet  
Matthew S. Yungwirth  
1180 West Peachtree Street  
Suite 700  
Atlanta, Georgia 30309-3448  
(404) 253-6900

Counsel for Defendants/Counter-Plaintiffs  
Alotech, Ltd., John Grassi, John Campbell,  
and Campbell Technology, Ltd.

DATED: 9/28, 2005

By: Ralph Levy (signed w/express permission by MSY)  
KING & SPALDING  
Ralph Levy  
John P. Brumbaugh  
191 Peachtree Street  
Atlanta, Georgia 30303  
(404) 572-4600

Counsel for Additional Defendant Womble  
Carlyle Sandridge & Rice PLLC

EXHIBIT A

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

CONSOLIDATED ENGINEERING  
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

ALOTECH, LTD., JOHN GRASSI, JOHN  
CAMPBELL, and CAMPBELL  
TECHNOLOGY, LTD.,

Defendants/Counter-Plaintiffs,

v.

WOMBLE, CARLYLE, SANDRIDGE &  
RICE, PLLC,

Counter-Defendant.

CIVIL ACTION NO. 04-1-01071

**CONSENT TO BE BOUND BY PROTECTIVE ORDER**

I hereby certify that I have read the Protective Order entered by the Court in the above-styled action. I agree to be bound by its terms. I also agree that any information I receive pursuant to the Protective Order ("Order") shall not be used other than as provided in the Order.

I agree that while any Material designated CONFIDENTIAL is in my possession, I will be personally responsible for preserving the confidentiality of such information in accordance with the terms of the Order. I agree to use any such information solely in connection with my participation in this litigation and not to disclose the same to any third party.

I understand and agree that if I am involved in any violation or breach of the Order that I may be held personally responsible and liable. I have full knowledge and understanding of the fact that I may be subject to the sanction of contempt of the Court for violation of the Order.

I also hereby consent to be subject to the personal jurisdiction of the Superior Court of Cobb County, State of Georgia for any proceedings relating to the enforcement of the Protective Order.

Dated:

\_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day mailed a copy of the foregoing Amended Consent Protective Order to the following parties:


Timothy H. Kratz, Esq.  
Luke Anderson, Esq.  
John A. Lockett, Esq.  
McGuire Woods LLP  
1170 Peachtree Street NE  
Suite 2100  
Atlanta, Georgia 30309

L. Norwood Jameson, Esq.  
Matthew C. Gaudet, Esq.  
Matthew S. Yungwirth, Esq.  
Duane Morris LLP  
1180 West Peachtree Street  
Suite 700  
Atlanta, Georgia 30309

Ralph B. Levy, Esq.  
John P. Brumbaugh, Esq.  
King & Spalding LLP  
191 Peachtree Street  
Atlanta, Georgia 30303

William H. Needle, Esq.  
Needle & Rosenberg  
999 Peachtree Street  
Suite 1000  
Atlanta, Georgia 30309-3915

This 4<sup>th</sup> day of October, 2005.

  
\_\_\_\_\_  
D. Austin Gillis  
Law Clerk to Judge J. Stephen Schuster  
Superior Court of Cobb County



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